SENATE—*Wednesday, September 19, 1990*

(Legislative day of Monday, September 10, 1990)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable JOSEPH LIEBERMAN, a Senator from the State of Connecticut.

Mr. LIEBERMAN. The prayer will be offered by a guest chaplain, the Reverend George N. Gray, Jr.

PRAYER

The Reverend George N. Gray, Jr., Episcopal Church of the Epiphany, 303 West Main Street, New Iberia, LA, offered the following prayer:

Let us pray:

Dear God, we pray that You bless the United States of America and those in governmental institutions who serve its people, especially this U.S. Senate.

Almighty God, You are the fountain of love, whose will is good and gracious, and whose law is truth. Grant to our U.S. Senators the wisdom to seek and the courage to carry out Your will in truth. Grant to all who serve in administrative authority in this Senate vigor and grace in the exercise of their duties.

We pray that the laws enacted by this legislative body may safeguard human rights, serve justice and promote peace. We humbly ask You to guide these Your servants of the U.S. Senate in establishing laws that provide for the needs of all our people, preserve our heritage, and fulfill our obligations in the community of nations.

We ask that You keep the citizens of the United States in Your holy protection, especially those Americans in the Middle East. We pray they may feel the comfort of Your abiding presence while we seek reconciliation.

May all Americans receive Your grace through faith and serve as instruments of Your love. May we be blessed with the prudence to be more faithful stewards of Your bounty for the benefit and blessing of all who are naked, hungry, or homeless. Incline our hearts to show affection and love for one another and our fellow citizens of the world at large, remembering especially the words of the psalmist, "How good, how delightful it is for all to live together like brothers." Help us, O Lord, to follow Your truth, so that in learning to be faithful citizens here, we may be faithful in Your everlasting kingdom. In Christ's name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 19, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. LIEBERMAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning following the time for the two leaders, there will be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

At 10 a.m. the Senate will resume consideration of S. 1511, the older workers bill. Rollcall votes are possible today relative to this bill.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time and all of the leader time of the distinguished Republican leader.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. SANFORD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

THE MIDDLE EAST

Mr. SANFORD. Mr. President, events of the last couple of days cause me to want to make, again, a statement that I have previously made concerning the Middle East. I support the President in what he has done in the Middle East. He has done it well, and he has contained Iraq.

I am opposed to those who are clamoring for war. This would not be a war worth fighting. I remember an assignment of the Infantry Officers Training School at Fort Benning when I was there during World War II. We were required to write on the subject: Why is the United States fighting this war? There were many very good answers, but not one of them would approximate a justification for a war in the Middle East today. War in the Middle East cannot be justified.

I take special pride in the fact that the fighting men and women based in North Carolina were so quickly ready to go to the Middle East to show the military might of the United States. I have a personal feeling for the spouses and the children and the families who saw their loved ones go to do their duty, to do their jobs. They have braced themselves for the worst. That is the grim reality of military service.

The tried and true troopers of the 82d Airborne and 18th Airborne Corps, the tough Marines at Camp Lejeune, and the most modern air fighter squadrons in the world at Seymour Johnson, and the air transport experts from Pope Air Force Base, were first to go to protect the national interests of the United States. It was they who stopped Saddam Hussein even before he approached the Saudi Arabian border and ended his aggression.

As one with a special pride and a deep concern for these young fighting men and women and their families, and as one with some part of the responsibility for America's military and

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

diplomatic actions, I have earnestly considered what my position should be. These fighting forces did their duty without firing a shot. Now the questions are: Should they fire a shot? Should they take the offensive? Should they be committed to fight a war? Is this the way that it must be done?

I am flatly opposed to committing our Marines and paratroopers and other military men and women to fight a war that does not need to be fought. I cannot be a party to bringing untold sorrow and loss into their families. Our objectives are clear, but clearly not worth the human costs to be paid by fighting a war.

My position is simple and clear. I support President Bush so far. But I will part company and vote against sending our young people to fight a war that we do not need to fight. This is the same message I am getting from the military families in North Carolina who say, "We are always prepared for the sacrifice by our loved ones to protect the Nation, but we do not want to see them fight a war that does not need to be fought."

Our national interests in the Middle East can best be protected without a military incursion. Our national interests endangered by the invasion of Kuwait by Iraq are the same as the interests of the other nations of the world. We must punish and stop aggression, and must stop the accumulation of military power by an avowed dictatorial aggressor. Our question is, how is that best accomplished? An attack by us—war—would be bloody and costly, would be difficult to bring to an end, and would have detrimental repercussions in the Arab world for generations. There is a far better way to get the job done.

The United States has already arrayed adequate military forces to halt the aggression, and now we should take a lesser role and turn deliberately and visibly to the United Nations to bring Saddam Hussein's adventure to a close by economic strangulation. The economic embargo should have at a minimum four goals:

First, we should require Iraq to retreat from Kuwait. It is not our responsibility to restore the Omir to his throne. It is our purpose to deny Saddam Hussein the fruits of his aggression.

Second, we should insist on a release of all hostages.

Third, we must use the power of the United Nations to assure that no member nation will provide Iraq with the weapons or means to produce any weapons of war, including poison gas, biological, and nuclear devices.

Finally, we must insist that the United Nations take an additional action that it has not yet taken and assert its authority to require Iraq to destroy all illegal weapons, gas, nuclear, biological, and insist on the permanent right to U.N. onsite verification.

To achieve these four goals, an economic strangulation is by far preferable to war. Relentless economic strangulation can be achieved by the United Nations' embargo on oil exports and many imports. Economic strangulation will bring Iraq to the U.N. terms. The world, and the United Nations can wait longer than can Iraq, and the embargo will succeed. A military attack would start us down an endless road.

These U.N. goals will serve all of the national interests of the United States that were jeopardized by the Iraqi invasion of Kuwait, as well as the interests of all the world, in clipping the wings of a ruthless dictator and a proven aggressor.

In achieving this kind of solution, based on the moral power of the United Nations, with the powerful help of the United States, we will have set a precedent that would-be aggressors in any part of the world will surely note.

The United States cannot be the policemen for all the world. The United Nations was designed to do this job. We can use this emergency to strengthen the United Nations with this kind of job in the years to come.

Thank you, Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who seeks recognition?

Mr. SANFORD. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BUDGET SEQUESTER AND FURLOUGHS OF FEDERAL EMPLOYEES

Mr. PRESSLER. Mr. President, I would like to speak to the Senate today on my legislation that would apply the budget sequestration rules to Senators and Congressmen. For a sophisticated country, the budget of the Government of the United States is in a very strange position. We are deadlocked in a budget negotiations crisis. We are attempting to reach a fiscal year 1991 budget agreement under the Gramm-Rudman-Hollings deficit reduction law.

Our new budget year begins October 1, and an agreement between the administration and the House and Senate must be reached by that date or a sequester goes into effect.

Many of our Federal civil servants have received a letter notifying them that they will be put on furlough. They will be required to go on furlough if the deficit reduction targets are not met.

I would like to read to the Senate a letter that some of these civil servants have received. This letter is significant because it is a reminder that many good-faith employees who work for the Federal Government have received furlough notices, after years of good service.

One person provided me with this letter confidentially, and I shall not mention the person's name, but it is a letter that person received after 20 years of hard work in an agency. I know that it is easy to use Federal employees as whipping posts. I have never done that. Most of them serve the public very loyally, faithfully and effectively.

I have said that, at times such as Watergate and other national crises, our Federal civil servants carry us through. They perform important functions. For example, if we do have a sequester, we will find that our airports will not be run correctly; we will find that meat will not be inspected properly during the sequester, and many other special services will be cut. In any event, perhaps the most important result is the demoralizing effect a Federal employee who receives a letter such as this.

I shall read a letter that some of our Federal employees received recently:

This memorandum notifies you that I propose to furlough you no earlier than thirty (30) calendar days from receipt of this notice. I am the Proposing Official and the Deciding Official for this action.

The furlough is being proposed under the authority of the Subparts C and D of 5 CFR Part 752 because the Department * * * is under a sequestration order pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) (commonly known as the Gramm-Rudman-Hollings Act), as amended. The initial sequester order of August 25, 1990, results in a level of funding significantly less than the current level for the period of October 1 through October 15, 1990. A final sequester order on October 15 or an appropriation could also result in funding reductions beyond October 15. The Gramm-Rudman-Hollings Act limited the amount of budget reduction to program (which is the Service Units) to 2 percent while administration (which is Headquarters and Area Offices) must be reduced by the full sequester percentage which is significantly higher. Accordingly, maintaining the present rate of spending will result in an expenditure of funds in excess of expected budgetary resources. Although many actions are being taken within the Department to curtail spending, this furlough is proposed to promote the efficiency of the service by assistance in meeting the Fiscal Year 1991 deficit reduction targets.

The following procedures and conditions are planned relating to the furlough:

1. The furlough will be on discontinuous days, beginning no sooner than October 1, 1990. Full-time employees will be furloughed no more than twenty-two (22) workdays or 176 hours. If you are a part-

time employee, your furlough time will be prorated, based on your work schedule.

Mr. President, I am going through the laborious task of reading this letter because I think each Senator should put himself or herself in the shoes of the hard-working Federal employees who need money to support their families, who have made a career decision to work for the Federal Government and have done a loyal and competent job. To be told that they are going to be furloughed, for no reason based on their performance, to receive a letter such as this has to be very demoralizing to employees in the Federal establishment.

The letter continues on:

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised at or before the beginning of each week of the number of furlough hours required to allow this agency to meet its financial obligations.

3. You may request a specific schedule for furlough time subject to management approval based upon mission and workload considerations.

4. Annual, sick, court or military leave (or the use of compensatory time or credit hours) that has been approved a day designated as a furlough day will be cancelled. However, when you receive the notice of your furlough dates, you may request that the furlough time be rescheduled, as provided in paragraph 3 above, if you wish to use the leave, compensatory time, or credit hours as approved.

Mr. President, I continue to read this letter because, according to all the principles of management, personnel furloughs are the worst thing Congress could possibly do to Federal employees. If such a letter were circulated in a private business or company, it would probably be cited by all of our business schools as a classic example of what not to do to inspire loyal employees.

The letter concludes:

I recognize the difficult personal financial implications of any furlough, no matter how limited its length. Every effort will be made to keep you informed as additional information regarding the agency funding level becomes available.

Unless you are a noncareer or limited term SES employee, a Schedule C employee, or a temporary employee on an appointment limited to one (1) year or less, you will be allowed seven (7) calendar days after the date of receipt of this memorandum to respond in writing and/or orally, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if * * * employee, will be allowed a reasonable amount of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. As the Deciding Official for this proposed action, I have designated representatives to hear an oral reply. To arrange for an oral reply or to review the supporting materials, please contact one of the appropriate individuals listed below:

So, Mr. President, this is a letter that has been received by some of our Federal employees. I have met with our Federal employees in my home State of South Dakota. We think of Federal employees as being mostly in Washington, but, in fact, they are mostly outside of Washington. We have people who work with our agriculture programs, and we have FBI agents, IRS agents, Forest Service personnel, unemployment counselors, and many others who work for the Federal Government in a number of capacities.

Also, I might say that in my State of South Dakota the State budget is about 47 percent Federal funds, and the impact of a sequester on some of our State offices remains to be seen.

Mr. President, in conclusion, the reason I am sponsoring legislation—and I hope to offer it here on the floor; I hope to attach it to something in the next few days or weeks—that would make Members of Congress feel the effects of a furlough as much as furloughed civil servants. I think the public does not want Congress exempted from budget sequestration. I think the public wants Congress treated just like we treat everybody else.

There are seven cosponsors of my legislation. I am prepared to offer it, to attach it to other legislation, so that Members of Congress would have their salaries reduced to the same extent as furloughed Federal employees' salaries are cut. This would make Members of the House and Senate subject to the sequester in the same way as other Federal employees and indeed as other Americans. Our farm programs would be substantially cut, and our Federal and State employees would suffer lost income.

I think it is time for Members of Congress to be subject to the same rules as everybody else. That is the reason for my legislation. I urge my colleagues to cosponsor it. I have sent a letter to each senatorial office seeking cosponsors. We have received seven cosponsors.

Mr. President, I ask unanimous consent that the text of the letter I have read to be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FURLOUGH NOTICE LETTER TO FEDERAL EMPLOYEES

This memorandum notifies you that I propose to furlough you no earlier than thirty (30) calendar days from receipt of this notice. I am the Proposing Official and the Deciding Official for this action.

The furlough is being proposed under the authority of the Subparts C and D of 5 CFR Part 752 because the Department * * * is under a sequestration order pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) (commonly known as the Gramm-Rudman-Hollings Act), as amended. The initial sequester order of August 25, 1990, results in a level of funding significantly less than the current level for the period of October 1 through October 15, 1990. A final sequester order on October 15 or an appropriation could also result in funding reductions beyond October 15. The Gramm-Rudman-Hollings Act limited the amount of budget reduction to program (which is the Service Units) to 2 percent while administration (which is Headquarters and Area Offices) must be reduced by the full sequester percentage which is significantly higher. Accordingly, maintaining the present rate of spending will result in an expenditure of funds in excess of expected budgetary resources. Although many actions are being taken within the Department to curtail spending, this furlough is proposed to promote the efficiency of the service by assistance in meeting the Fiscal Year 1991 deficit reduction targets.

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2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised at or before the beginning of each week of the number of furlough hours required to allow this agency to meet its financial obligations.

3. You may request a specific schedule for furlough time subject to management approval based upon mission and workload considerations.

4. Annual, sick, court or military leave (or the use of compensatory time or credit hours) that has been approved a day designated as a furlough day will be canceled. However, when you receive the notice of your furlough dates, you may request that the furlough time be rescheduled, as provided in paragraph 3 above, if you wish to use the leave, compensatory time, or credit hours as approved.

I recognize the difficult personal financial implications of any furlough, no matter how limited its length. Every effort will be made to keep you informed as additional information regarding the agency funding level becomes available.

Unless you are a noncareer or limited term SES employee, a Schedule C employee, or a temporary employee on an appointment limited to one (1) year or less, you will be allowed seven (7) calendar days after the date or receipt of this memorandum to respond in writing and/or orally, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if * * * employee, will be allowed a reasonable amount of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. As the Deciding Official for this proposed action, I have designated representa-

tives to hear an oral reply. To arrange for an oral reply or to review the supporting materials, please contact one of the appropriate individuals listed below:

Mr. PRESSLER. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

Mr. DIXON. Mr. President, I ask unanimous consent to proceed for a brief period of time as in morning business to make a statement and to introduce an important piece of legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois is recognized.

Mr. DIXON. I thank the Chair.

(The remarks of Mr. DIXON pertaining to the introduction of S. 3073 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

"MOTOR VOTER" LEGISLATION

Mr. DOLE. Mr. President, I want to share with my colleagues letters that I recently received from two groups whose opinions I happen to respect—the National Association of Counties and the Justice Department. Both letters point out the pitfalls of S. 874, the "motor voter" bill reported out of the Rules Committee last March. Both letters also endorse S. 3021, an alternative voter registration bill introduced last week by myself and by my distinguished colleague from Alaska, Senator STEVENS.

Mr. President, I ask unanimous consent that the full text of the letters be inserted at this point in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, September 14, 1990.

Hon. BOB DOLE,
Senate Minority Leader, S-230 Capitol Building, Washington, DC.

DEAR SENATOR DOLE: On behalf of the National Association of Counties (NACo) I want to take this opportunity to offer our support for your bill S. 3021, the National Voter Registration Enhancement Act.

This bill addresses the real problem of providing additional resources to state and local governments which want to make voter registration easier and more accessible to their citizens. Many counties and states have already done so by adopting various procedures, including mail-in, motor-voter, and agency registration, which meet the needs of their populations within the availability of their financial resources. By providing $25 billion over 3 years your bill would make it possible for those county and state governments that would like to do more in voter registration to do so.

As you know, NACo has been very concerned about the unfunded mandates imposed on counties by the federal government. The bill approved by the Rules Committee, S. 874, would require state, county, and other units of local government to absorb the costs of a federally mandated voter registration program. No consideration is given to whether state and local governments are doing a good job in registering people to vote or whether they have the resources to fund such requirements. The truth is that most county governments do an excellent job in voter registration and do not have the extra resources to fund federally mandated voter registration efforts. If S. 874 is adopted it will be another cost for county governments to bear. Such federal mandates mean higher taxes and/or reduction of those services which county residents and their elected officials would like to have available.

Your bill also addresses the problem of those officials who would deny or interfere with the person's right to register by creating criminal penalties for such actions. Strict enforcement of this section of S. 3021 will quickly rid our nation of those individuals who would deny someone the right to register to vote.

Once again, thank you for introducing S. 3021 and for your support on this issue.

Sincerely,

JOHN P. THOMAS,
Executive Director.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 13, 1990.

Hon. DAN QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed is an alternative to S. 874, the National Voter Registration Act of 1989. We have grave concerns about the pending bill and urge you to support the alternative, which has been introduced by Senators Dole and Stevens as S. 3121.

We support efforts to increase voter turnout, but we strongly believe that the present record does not support the mandatory imposition of registration techniques, with their attendant costs to the states, as a necessary or appropriate means of achieving that goal. Moreover, we are convinced that the impositions set forth in S. 874 will result in significant fraud in voter registration and elections. That bill, in its current form, lacks any meaningful methods for addressing public corruption resulting from the newly mandated registration procedures.

S. 3121 would foster increased voter participation while simultaneously protecting the integrity of the electoral process. It would encourage the states to adopt registration procedures that will be most effective in their own differing circumstances. We hope that the Senate will adopt S. 3121 and thereby avoid the important shortcomings of S. 874.

The Office of Management and Budget has advised this Department that there is no objection to this report.

Sincerely,

BRUCE C. NAVARRO,
Deputy Assistant Attorney General.

TRIBUTE TO GEN. LEMUEL C. SHEPHERD

Mr. HEFLIN. Mr. President, I rise with great sadness, today, to inform my colleagues of the death of a great American—U.S. Marine Corps Gen. Lemuel Cornick Shepherd, Jr., on August 6, 1990, at the age of 94. General Shepherd was an incredible man with many diverse talents and abilities, who gave more than 42 years of distinguished service to his country.

Lem Shepherd was the first Commandant to serve on the Joint Chiefs of Staff and one of the few marines who served in three major wars—World War I, World War II, and the Korean conflict.

My great respect for General Shepherd started when I joined the 9th Regiment, which he commanded as my colonel in December 1942. No one that I have ever known had more of the spirit of the Marine Corps than General Shepherd. He instilled this spirit into each marine that he commanded. He gave this remarkable regiment the name of the "Fighting 9th." When reveille was sounded in the morning it was followed by a chant of "rise and shine with the striking 9." He demanded excellence in every aspect of military life. The pride and excellence that he instilled into every one of his 9th Marines soon became evident and was confirmed in combat. He was a fearless leader, and the men of his command followed him with complete dedication regardless of the feared consequences.

General Shepherd was born February 10, 1896, in Norfolk, VA. Upon graduation from the Virginia Military Institute, he was commissioned a second lieutenant on April 11, 1917. Lieutenant Shepherd was a member of the 5th Marine Regiment with the first elements of the American expeditionary forces. After being wounded twice in action at Belleau Wood in June 1918, he returned to the front in August, where he was wounded a third time in the Meuse Argonne offensive.

Captain Shepherd returned to the United States in December 1920 and was assigned as aide-de-camp to the Commandant and aide at the White House. He subsequently had tours of duty with the marine detachment aboard the U.S.S. *Idaho*, with marine barracks, Norfolk, VA, with the 3d Marine Brigade in Tientsin and Shanghai, China, and with the Garde D'Haiti. In 1936 he was promoted to lieutenant colonel, and then commanded the 2d battalion, 5th Marine Regiment. After serving on the staff of the Marine Corps School, Colonel Shepherd took command of the 9th Marine Regiment, where I had the honor and privilege to serve under him, as he organized, trained, and took our unit overseas as part of the 3d Marine division.

Achieving the rank of brigadier general in July 1943 while serving on Guadalcanal, Shepherd was assigned as assistant division commander of the 1st

Marine division. He then assumed the 1st Provisional Marine Brigade in May 1944 and led it in the invasion and recapture of Guam. Promoted to major general, he organized the 6th Marine Division and led it throughout the Okinawa operation. He also took the division to Tsingtao, China, where, on October 25, 1945, he received the surrender of the Japanese forces in that area.

When the Korean war erupted, General Shepherd had just assumed command of the Fleet Marine Force, Pacific. In this capacity, he participated in the landing at Inchon and the evacuation of our forces from Hungnam following the withdrawal from the Chosin Reservoir in North Korea in December 1950.

On January 1, 1952, General Shepherd was appointed Commandant of the Marine Corps by President Harry S. Truman. General Shepherd was the first Commandant to become a member of the Joint Chiefs of Staff. After initially trying to retire from active duty in 1956, General Shepherd was called back to serve as Chairman of the Inter-American Defense Board. On September 15, 1959, General Shepherd relinquished his duties.

Among the numerous awards General Shepherd received during his career were the Navy Cross, the Army Distinguished Service Cross, the French Croix De Guerre, the Distinguished Service Medal with two gold stars, and the Legion of Merit with oak leaf clusters.

During General Shepherd's 42 years of service, he had the opportunity to influence thousands of young men that had the privilege to serve with him. He epitomized the virtues that every leader should strive to attain, and it is hoped that the new marine officers and all people could emulate the leadership qualities of Gen. Lemuel Cornick Shepherd, Jr.

TIME FOR ACTION ON SEED II

Mr. LIEBERMAN. Mr. President, as we come to the end of the 101st Congress, we have little time to reflect on the incredible changes that have taken place in Eastern Europe during the last 2 years.

Those changes have been nothing short of monumental. The Berlin Wall, symbol of the separation of East and West, is now a memory. But also gone is the first blush of enthusiasm for helping Eastern Europe. Understandably, we are preoccupied with events in the Middle East and problems with the economy.

Nonetheless, we should not forget our commitment to the nations of Eastern Europe, a commitment that spans four decades. We began the process of helping these nations by extending aid to Hungary and Poland last fall with the passage of SEED I. We should continue the process of helping the other nations of Eastern Europe by passing SEED II.

SEED II is a thoughtful, cost effective plan for aiding the emerging democracies of Eastern Europe. Its passage is crucial for maintaining American credibility in Eastern Europe and for helping American businesses capture a share of the vast potential of emerging Eastern European markets. SEED II not only offers direct aid to these nations, it also establishes programs that will help American firms investing in Eastern Europe.

Senator PELL recently sent a "Dear Colleague" that forcefully outlines the need to act on SEED II before we finish business for the year. The "Dear Colleague" also contains an excellent analysis of the legislation, including funding levels. I am inserting in the RECORD a copy of Senator PELL's "Dear Colleague" for those of my colleagues who may have missed it and for those many people following our actions with regard to aiding Eastern Europe.

In addition to commending Senator PELL for his leadership on this issue, I want to also commend Senators BIDEN and SIMON and their fine staffs for their hard work and effort in putting together SEED II and its predecessor SEED I.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, September 17, 1990.

Subject: SEED II (East European Aid) Legislation.

DEAR COLLEAGUE: I wanted to provide you the summary of a major piece of legislation, the Support for East European Democracy Act of 1990 (SEED II), which was recently reported by the Foreign Relations Committee and which should be before the Senate in the near future.

SEED II is the principal element in the International Affairs Authorization Act (S. 2944). It represents a comprehensive revision of the Support for East European Democracy Act of 1989 (SEED I) enacted last November, and is among the most important pieces of foreign policy legislation reported by the Foreign Relations Committee during my three decades in the Senate.

You will recall that last fall, having received a rather modest Administration request for aid to Poland and Hungary, the Foreign Relations Committee began from scratch and drafted comprehensive SEED legislation to set the stage for a new American initiative in Eastern Europe.

The SEED Program created by that legislation, and as expanded by SEED II, is directed toward an unprecedented goal: that of helping new and evolving governments in Eastern Europe build successful free-market democracies on the rubble of failed communism. It does so not through a monetary giveaway, but predominantly through targeted technical assistance aimed at building institutions of democracy and institutions needed in free-market economies.

Two points about the SEED II legislation bear emphasis:

First, this bill is totally congruent with Administration policy as regards the kind of aid it envisages. It permits technical economic assistance and democracy-building assistance in all European countries that have been communist, including the Soviet Union. But aside from authority to participate in multilateral financial efforts (for example, stabilization back-up loans for countries such as Poland), all of the focus is on advisory how-to-do-it aid—not on loans or grants to governments. Indeed, in the case of the Soviet Union, such financial assistance is explicitly prohibited.

Second, while providing a sound framework for action, the bill contains no country-by-country earmarks and no provisions that require the President to take any particular action he does not regard as advancing the cause of building free-market democracies in Eastern Europe. The bill does mandate the President to implement two new programs, but ones Administration officials have agreed are sound and well worth undertaking in the context of this legislation's purpose. These programs are:

The Books-for-Eastern-Europe program, which will assist in the publication of a whole new political and economic textbook literature; and

American Business Centers, two of which will be built as models (probably in Warsaw and Prague) to support the start-up activities of U.S. firms on a user-fee basis. These activities would eventually, like the entire SEED Program, be phased out as the free market, based on free political institutions, gained strength.

A third program mandated in the bill—the Parliamentary Partnership—is congressionally-run and will simply formalize, and expand to other countries, the Gift-of-Democracy program already in operation to provide material aid to the new parliament in Poland.

I believe that SEED II does what good legislation should do, by setting out: broad goals and authorities, actions recommended for presidential consideration, certain actions required, funds adequate to do the job, the Executive flexibility to allocate that money under changing circumstances, and reporting requirements to facilitate congressional oversight.

As shown in the accompanying table, SEED II authorizes an FY 91 appropriation of $535 million substantially higher than the $300 million requested by the Administration. A majority on the Foreign Relations Committee was convinced that the larger effort was warranted and could be cost-effective in serving two fundamental U.S. interests:

(1) Consolidating the transformation of the communist world; and

(2) Ensuring a major political and economic role for the United States in the new Europe that will emerge.

Otherwise, I believe the bill contains no provisions that are at odds with Administration policy. Indeed, as the first order of business during floor action, I intend to propose a "Committee amendment" containing a variety of minor adjustments based upon Administration comments and additional Administration requests, which the Committee expects to receive shortly.

Because of the importance of this legislation and the considerable efforts within the Foreign Relations Committee to shape a bill that provides a broad mandate and wide flexibility to the President in meeting the challenge in Eastern Europe, I hope you will support prompt enactment of SEED II.

With every good wish.
Ever sincerely,

CLAIBORNE PELL.
Chairman.

SEED FUNDING LEVELS

	SEED I Authorizations 3 yr [1]	SEED I appropriations	SEED II House appropriations [2]	SEED II SFRC
Large scale loans/grants and food aid:				
Food aid	125	125		
Multilateral action	200	200		
Enterprise funds	300	50	214	225
AID/E.F.-type activities				
Private sector development:				
Labor transition	5	1.5		
Technical training	10	3		
Scholarships	10	2	80	100
Trade/develop program	6	2		
Peace Corps	6	2		
(American business centers)				([3])
Dem. Inst./Exchanges:				
Dem. institutions/ exchanges	12	4		
Exchanges/ed. & cul.	12	3	20	40
Science/technology	8	3		
(Parliamentary partnership)				[4] (12)
(Books for Eastern Europe)				([3])
Environment/housing/health:				
Environment	40	13.5		
Housing			105	100
Medical	4	2		
EBRD			70	70
Total	738	411	489	535
Supp. for missions/personnel				50

[1] SEED I authorizations unused during FY 90 will be repealed by SEED II, and the process shifted onto an annual basis.
[2] The House Appropriations bill has already passed the House.
[3] Activity is mandatory, but with no specific amount earmarked.
[4] $12 million to be transferred to support the Parliamentary Partnership program of material and advisory assistance to new parliaments, overseen by the Joint Task Force on East European Parliamentary Development.

SECTION-BY-SECTION SUMMARY OF THE SUPPORT FOR EAST EUROPEAN DEMOCRACY ACT (AS AMENDED BY SEED II)

Sec. 1. Title and table of contents:

Sec. 2. United States policy regarding Eastern Europe:

This section provides an overall statement of United States policy, which is to promote the transition of communist countries of Europe to free-market democracy and full membership in the family of democratic nations.

Sec. 3. Legislative authority for Presidential action:

This key section describes the essence of the SEED legislation, which is to provide technical assistance for environmentally-sound development of private sector economic institutions and democratic political institutions.

The definition of an "eligible" country is set forth such that the President is authorized to use any particular authority in the SEED Act if he determines that the use of that authority would assist a particular European country in the emergence or transition from communist rule "through the development or strengthening of democratic institutions and the practices of a free-market economy."

While this authority would enable the President to extend technical assistance (primarily in the nature of instruction and advice) into the Soviet Union or any of its republics for purposes of strengthening the private sector or building institutions needed for democracy, loans or grants to the Soviet Government, or any instrumentality thereof, are explicitly prohibited in Title XII.

Sec. 4. Support for East European democracy (SEED) Program:

This existing, but now expanded section, identifies all of the activities of the U.S. Government—some authorized in this bill, some authorized and funded elsewhere—that comprise the overall SEED effort.

TITLE I—STRUCTURAL ADJUSTMENT AND U.S. SUPPORT FOR MULTILATERAL ACTION

Sec. 101. Policy and authority on structural adjustment:

This section encourages and authorizes the President to join in a multilateral debt write-down in Eastern Europe. This action would be highly cost-effective inasmuch as the U.S. would sacrifice an almost worthless "asset" (debt unlikely to be repaid) for the enormous financial improvement in the condition of countries such as Poland that would result from an across-the-board lifting of debt by all Paris Club lenders.

Sec. 102. Agricultural assistance:

This section encourages appropriate P.L. 480 assistance as part of a multilateral program of agricultural aid for Poland and other eligible countries.

Sec. 103. Debt-for-equity swaps and other special techniques:

This section advocates innovative techniques for accomplishing multiple goals, such as debt reduction combined with environmental improvement.

Sec. 104. IMF membership:

This section urges U.S. efforts to promote International Monetary Fund membership for East European countries at the appropriate time.

Sec. 105. OECD East-West Center:

This section urges United States participation in this new institution.

Sec. 106. European bank for reconstruction and development:

This section sets forth relevant findings, followed by authorization of U.S. participation in the EBRD.

TITLE II—PRIVATE SECTOR DEVELOPMENT

Sec. 201. Enterprise funds for Poland and Hungary:

This section, enacted in SEED I, provides basic authority for the Polish-American and Hungarian-American Enterprise Funds.

Sec. 202. A.I.D. authority to support private sector development:

This section provides broad authority to AID to conduct Enterprise-Fund type activities.

Sec. 203. Labor market transition:

This section, enacted in SEED I, provides basic Dept. of Labor authority for SEED activities.

Sec. 204. Technical training for private sector development:

This section authorizes a variety of AID programmatic goals in many fields. The activities described in 208–216 would be specific ways to accomplish a number of these goals.

Sec. 205. Free enterprise corps:

This section defines the concept of a Free Enterprise Corps to promote private sector development and encourages AID to aggregate a number of programs under this heading.

Sec. 206. Peace Corps programs:

This section encourages Peace Corps activities supportive of the SEED Program and consistent with the Peace Corps Act.

Sec. 207. Use of local currency generated by agricultural assistance:

This section authorizes certain uses for local East European currency produced by the sale of U.S. agricultural aid.

Sec. 208. International Executive Service Corps (IESC):

This section encourages effective utilization of the IESC.

Sec. 209. Practical Business Training Program:

This section describes and encourages establishment of a program to support practical business training for East European business managers and executives.

Sec. 210. Worker retraining assistance:

This section encourages U.S. support for worker retraining and job placement in eligible East European countries and use of the AFL-CIO Free Trade Union Institute as a key agency for such assistance.

Sec. 211. Travel tourism training for early hard currency earnings:

This section encourages U.S. assistance for training in the skills needed to realize the hard-currency earnings potential of the travel/tourism industry in East European countries.

Sec. 212. SEED Foundation:

This section authorizes and encourages the establishment of a new foundation, modeled on the highly successful Inter-American Foundation, to operate at the grass roots level to assist the start-up of small businesses in Eastern Europe. (Sec. 101 encourages arrangements whereby East European governmental debt not forgiven is repaid in local currencies which are then channeled into SEED Foundation activities.)

Sec. 213. Business and management education initiative:

This section encourages the President to provide financial support for a comprehensive program under which American universities with strong business schools would assist East European institutions of higher education in developing curricula in business and management skills.

Sec. 214. Support for family farm and agribusiness development:

This section sets forth policy goals for U.S. assistance for family farm and agribusiness development in eligible East European countries.

Sec. 215. United States policy of private financial support for credit unions:

This section sets forth a policy regarding U.S. encouragement of the development of credit unions in Eastern Europe.

Sec. 216. Small Business Administration programs:

This section encourages SBA programs in Eastern Europe where those activities would augment and not duplicate other U.S. private sector development initiatives.

TITLE III—TRADE AND INVESTMENT

Sec. 301. Use of generalized system of preferences:

This section notes that Poland was granted eligibility for GSP trade treatment by SEED I, and encourages the President to use such authority as appropriate to promote private sector development in that country.

Sec. 302. Overseas Private Investment Corporation Programs:

This section (in conjunction with amendments elsewhere in the SEED II bill) urges and authorizes the President to expand OPIC programs in Eastern Europe in accord with the eligibility criteria set forth in section 3.

Sec. 303. Export-Import Bank Programs:

This section urges and authorizes the President to expand EXIM Bank activities in Eastern Europe in accord with the eligibility criteria set forth in section 3 (while noting that EXIM Bank activities in any country can begin only after trade normal-

ization has occurred under the criteria and procedures of the Jackson-Vanik amendment).

Sec. 304. Trade Credit Insurance Program for Poland:

This section notes that SEED I authorized the President to provide back-up guarantees to the EXIM Bank for the short-term financing of exports to Poland; notes further that elsewhere in SEED II the President is authorized to guarantee medium-term financing as well; and encourages the President to use such authorities as appropriate to promote Polish private sector development.

Sec. 305. Trade and development program activities:

This section authorizes Trade and Development Program activities in eligible East European countries.

Sec. 306. Bilateral investment treaties:

This section urges the President to seek bilateral investment treaties with eligible East European countries.

Sec. 307. Reduction of Cocom restrictions:

This section encourages further reduction in Cocom export controls consistent with the need to protect militarily sensitive technology.

Sec. 308. Conference on expanded technological cooperation:

This section "urges the President to act, in cooperation with its allies and eligible East European countries, to support the convening of a non-governmental international conference, involving key leaders in science and industry, that would yield analysis and recommendations of means by which valuable advanced technologies might be incorporated safely, with rigid and effective safeguards against diversion and military use, in expanded East-West economic activity."

Sec. 309. Port access:

This section promotes a policy of granting greater access to U.S. ports for the vessels of eligible East European countries by mandating that access of such vessels shall not be denied except for reasons of "safety, protection of the national security, and the need to rectify unfair foreign trade and shipping practices."

TITLE IV—EDUCATIONAL, CULTURAL, AND SCIENTIFIC ACTIVITIES

Sec. 401. Educational and cultural exchanges and sister institutions programs:

This section urges the expansion of various government-funded and privately-funded exchange activities, and governmental support for the establishment of "sister institution" relationships between American and East European cities, universities, and other organizations.

Sec. 402. Scholarship partnership:

This section authorizes AID to establish and administer a program of scholarship aid to enable East European students to study in the United States, with an emphasis on business and economics.

Sec. 403. Science and technology exchange:

This section authorizes funding for implementation of existing science and technology exchange agreements with Hungary and Poland, and urges negotiation of similar agreements with other eligible East European countries.

Sec. 404. Clearinghouse to promote cooperation in higher education:

This section urges USIA and the Department of Education to cooperate in providing a clearinghouse to facilitate creation of "sister institution" relationships between American and East European colleges and universities.

Sec. 405. Soviet debt repayment and United States-Soviet exchange:

This section expresses congressional approval of the concept of Soviet repayment of outstanding Lend-Lease debts in the context of a bilateral agreement under which the United States would agree to use proceeds from such repayment to support educational exchange and SEED Foundation activities that would strengthen free-market democracy in the Soviet Union.

Sec. 406. Books for Eastern Europe Program:

This section requires implementation of a Books-for-Eastern-European program designed to enhance the printing and publication capabilities of eligible East European countries in order to meet their urgent need for new political, historical, and economic literature.

Sec. 207. Library exchange:

This section urges financial support for efforts by U.S. libraries with relevant resources to assist East European libraries in reconstituting themselves as repositories of national culture and heritage.

Sec. 408. Andrei Sakharov educational exchanges:

This section, in combination with another, authorizes and urges implementation of an Andrei Sakharov exchange program to facilitate study by graduate students in the United States and eligible East European countries in the fields of environmental protection and the health sciences.

TITLE V—DEMOCRATIC INSTITUTION-BUILDING

Sec. 501. Sustained support for transition to democracy:

This section authorizes the President to use AID, USIA, the National Endowment for Democracy, and other agencies in a "comprehensive and sustained effort to facilitate the transition in Eastern Europe from totalitarian communist rule to a system of political democracy" through assistance in the building of judicial, economic, journalistic, trade union, and political institutions.

Sec. 502. Association of Former Members of Congress:

This section urges appropriate utilization of the Association of Former Members of Congress in "a constructive role in advertising government and organizations in Eastern Europe on electoral and legislative procedures of constitutional democracy."

Sec. 503. Civic education exchanges:

This section urges implementation of a USIA program to familiarize educators in East European countries with American curricula concerning the principles and practice of constitutional democracy.

Sec. 504. Institutionalizing civilian control of security forces:

This section urges U.S. leadership in a multilateral effort to promote instruction designed to assist East European nations in establishing civilian oversight and management of defense and internal security forces.

Sec. 505. Strengthening institutions of free broadcasting:

This section urges U.S. leadership in a multilateral effort to assist eligible East European governments in establishing institutions of governance and operation for editorially independent radio and television broadcasting.

Sec. 506. Rule-of-law initiative:

This section urges utilization of the American Bar Association in a program that would mobilize the Association's resources to provide technical assistance and training in the areas of constitutional law, criminal justice, judicial reform, and other legal areas of interest to eligible East European countries.

TITLE VI—FOSTERING PARTNERSHIP

Sec. 601. Parliamentary Partnership Program:

This section establishes a Parliamentary Partnership Program, funded at $12 million, to provide material assistance and advisory support to newly established East European parliaments. This effort, to be overseen by a joint congressional task force, will be supplemented by exchange activities administered by USIA.

602. Multilateral interparliamentary cooperation:

This section expresses congressional support for the establishment of a 35-nation (CSCE member) interparliamentary assembly modeled (and perhaps built) on the North Atlantic Assembly, in which Congress has participated actively since 1955. The provision mandates appointment of a small congressional delegation to explore and participate in current European efforts to form such an institution.

Sec. 603. Joint Commission on Economic Conversion and Constructive Partnership:

This section urges U.S. participation in a joint U.S.-Soviet commission mandated to identify potential joint economic ventures of mutual benefit; means by which defense resources could simultaneously be reallocated to non-military purposes; and ways in which the two powers could exercise joint leadership in improving the global environment, world health care, and human welfare.

Sec. 604. Role of the States:

This section encourages participation by governors and State agencies in SEED Program-related activities, and mandates the Executive branch to provide necessary information to assist governors in preparing proposals for SEED Program participation.

TITLE VII—SUPPORT FOR AMERICAN BUSINESS INITIATIVE

Sec. 701. Director for American business initiative in Eastern Europe:

This section mandates the President to designate a Director for American business initiative in Eastern Europe to be responsible for operations of the East European Business Information Center system (and related job bank and market research activities); to assist in the establishment and operation of American Business Centers in Eastern Europe; and to coordinate the White Conference and Presidential Advisory Board mandated by this title.

Sec. 702. East European business information center system:

This section mandates the President to establish an information system to serve as a clearinghouse for information needed by Americans engaged in business and voluntary activities in Eastern Europe.

Sec. 703. Creation of American business centers to promote technical assistance and trade opportunity:

This section urges the creation of a network of American Business Centers to support, on a user-fee basis, the start-up business activities of U.S. firms in Eastern Europe. The provision mandates creation of two such Centers at locations to be determined by the President.

Sec. 704. Market research and job banks:

This section mandates the Director of American business initiative in Eastern Europe to undertake an intensified program

of market research in that region to identify the full range of business opportunities for American firms, and urges the establishment of a job bank system to catalog the names and skills of American and East European applicants.

Sec. 705. White House Conference and Presidential Advisory Board to Promote American business initiative in Eastern Europe:

This section urges the President to convene a White House conference and assemble a Presidential Advisory Board in order to develop effective means of supporting American business activity in Eastern Europe.

TITLE VIII—ENVIRONMENTAL PROGRAMS

Sec. 801. Environmental initiatives:

This section authorizes a range of assistance activities in Eastern Europe to be conducted by the Environmental Protection Agency and the Department of Energy, to include U.S. support for the establishment of a Regional Environmental Center in Budapest.

Sec. 802. Technical assistance to prepare for environmentally sound infrastructure modernization:

This section urges emphasis on technical assistance that serves to assist eligible East European countries in planning for environmentally-sound infrastructure modernization and, in the process, orients decisionmakers in such countries to the merits of American-produced environmental technologies.

Sec. 803. Conference on the environment:

This section urges U.S. support for an international environmental conference under the auspices of the Regional Environmental Center in Budapest.

Sec. 804. Energy and Environmental institutes:

This section urges U.S. support for the creation of national energy and environmental institutes in eligible East European countries to promote sound national decision-making and the successful functioning of the Regional Environmental Center.

Sec. 805. Cooperation on conservation:

This section urges U.S. support for the development of sound conservation policies in Eastern Europe, with emphasis on protection of water resources, fish, and wildlife, and authorizes participation by the U.S. Fish and Wildlife Service.

Sec. 806. Agenda for regional environmental center:

This section urges the President to advocate certain goals in the context of negotiations aimed at creating an agenda for the Regional Environmental Center in Budapest.

Sec. 807. Safer nuclear power:

This section urges the President to promote the attainment of a multilaterally-supported, independent and objective examination of nuclear facilities in Eastern Europe, leading to recommendations regarding the future of such facilities.

TITLE IX—HEALTH, HOUSING, AND HUMANITARIAN PROGRAMS

Sec. 901. Medical assistance:

This section authorizes assistance to eligible East European countries for medical training and health care planning.

Sec. 902. Assistance for housing:

This section authorizes technical assistance to eligible East European countries to improve housing and associated infrastructure, and authorizes guaranties under the housing guarantee provisions of the Foreign Assistance Act of 1961.

Sec. 903. Aid for victims of Communist regimes:

This section urges the Administration to act with allies and multilateral humanitarian agencies, to assist persons traumatized by brutal treatment under the old order in Eastern Europe, and specifically calls for the President to act to ameliorate the plight of Romanian orphans.

TITLE X—SEED PROGRAM MANAGEMENT

Sec. 1001. Policy coordination of SEED Program:

This section, enacted in SEED I, directs the President to designate a SEED Program Coordinator within the Department of State.

Sec. 1002. Encouragement and support of volunteerism:

This section urges the Director of American business initiatives in Eastern Europe, under the direction of the President, to use the East European Business Information System, the job banks under section 704, periodic mailings to American civic organizations, and other means to encourage and support voluntary assistance to eligible countries.

Sec. 1003. Adequate staffing at United States Embassies and missions:

This section directs the Secretary of State to study the personnel needs of U.S. missions and trade centers in Eastern Europe, and directs that the $50 million in additional funds authorized to be appropriated by section 1201(a)(3) be used so as to meet increased personnel needs in Eastern Europe while sustaining U.S. representation levels in Western Europe during a time of sweeping economic change throughout Europe.

Sec. 1004. Soviet-Eastern European Research and Training Act Program:

This section urges allocation of some of the funds authorized by section 1201(a)(3) to this program that supports training of U.S. experts on Eastern Europe.

Sec. 1005. Cost-effective use of surplus equipment:

This section mandates the General Services Administration and the Department of Defense to survey existing U.S.-Government-owned surplus equipment for possible cost-effective use in the SEED Program, and authorizes such assistance with certain limitations.

TITLE XI—REPORTS TO CONGRESS

Sec. 1101. Report on initial steps taken by United States and on Poland's requirement for agricultural assistance:

This section, enacted in SEED I, required a report on early actions and needs under the SEED Program.

Sec. 1102. Report on confidence-building measures by Poland and Hungary:

This section, enacted in SEED I, required a report concerning certain measures that could be taken by Poland and Hungary.

Sec. 1103. Report on environmental problems:

This section, enacted in SEED I and modified by SEED II, elaborates on the environmental reporting required to be included in the annual reports submitted under section 1104.

Sec. 1104. Annual SEED Program report:

This section requires and describes an annual SEED Program report to be submitted beginning not later than January 31, 1991.

Sec. 1105. Reports on certain activities:

This section requires a simultaneous classified report on any espionage activities against the U.S. and its allies by any country receiving assistance under this Act.

Sec. 1106. Notifications to Congress regarding assistance:

This section requires notifications concerning reprogramming of funds in accord with established procedures under the Foreign Assistance Act of 1961.

TITLE XII—SEED PROGRAM FUNDING

Sec. 1201. Authorization of appropriations:

This section authorizes: $465 million in FY91 funding for various kinds of bilateral SEED Program assistance to eligible countries; a $70 million FY 91 contribution to the European Bank for Reconstruction and Development as the first of five equal annual contributions; and $50 million in additional FY 91 funding for the Department of State and other foreign affairs agencies.

The $465 million for bilateral aid is further allocated (without specific earmarks) among various titles of the SEED Act, and three activities are established as mandatory: the Parliamentary Partnership program (required by Sec. 601); the Books-for-Eastern-Europe program (required by sec. 406); and two model American Business Centers (required by sec. 703).

Sec. 1202. Technical provisions:

This section contains certain technical provisions relating to the use of funds authorized by section 1201.

EULOGY FOR ALTHEA SIMMONS

Mr. BIDEN. Mr. President, I speak with a heavy heart in memory of a close, good friend. Yet as I speak in memory of Althea Simmons, while I mourn her recent death, I cannot speak mournfully of her life, nor of the long personal friendship I enjoyed with her during her 13 years as the director of the NAACP's Washington office.

Althea Simmons was an extraordinary person, an extraordinary woman, a highly skilled black lawyer from Shreveport, LA, who brought to her Washington duties a wisdom untainted by the bitterness of 26 years as an NAACP field organizer in the troubled South of the fifties and sixties might understandably have engendered in her. It was not, by any means, that she had been unaffected by those long, frustrating, often dangerous years. You had only to meet her once to see clearly in her eyes the record of the costly successes and costlier disappointments of those years, and to see in that same direct, unwavering gaze the inner strength and the utter fearlessness that had carried her though them.

Although she left behind a South that had begun to free itself from the shadows of the past and today struggles side by side with the rest of the nation toward a fuller, freer future for all Americans, she came to Washington knowing that her task was far from finished, knowing that she would not live to see it concluded—and absolutely undaunted and unembittered by that realization. She had the capacity to draw strength and courage both from the adversity of the past and

from the promise of the future, and she never burdened herself either with regrets for causes lost nor with illusions about victories yet unwon. She was that rarest and most invaluable of personalities—an idealist who never abandoned her vision and a pragmatist who never scorned the hard, plain work it takes to make a dream come true.

As anyone who knew her will testify, being lobbied by Althea Simmons was a unique experience. It was as though she had somehow absorbed both the smiling, persistent, don't-take-no-for-an-answer political persuasion of a Lyndon Johnson and the gentle-but-oh-so-tough moral muscle of a Martin Luther King, Jr. If you found yourself alone in a room with Althea on a mission, you came out on her side—or wishing you were. You couldn't ignore her and she left you no place to hide. When you talked with her, you knew you were hearing the unvanquished, unvarnished voice of a truth she had lived and meant to be heard; a voice that made her case with care and precision—and a directed passion that was never off target; a voice that was by turns quietly persuasive and eloquently forceful; a voice that blended moral strategies and practical tactics into irresistible argument.

She was canny and she was cagey, but she never allowed you to lose sight of her objective. She was never threatening, but she never allowed you to be confused about the probable consequences of your actions or inactions. She knew when to push and when not to push—and when she applied the pressure, it was always framed in compelling moral terms that conveyed an unmistakable political message. And she resolutely refused to look back. Her approach was never, "What have you done for me lately?", but "What can we do next?"

No one who knew her will ever forget Althea Simmons. I grew to know her well over the years. I learned to admire her ability as a advocate. I learned to respect her intergrity in a cause, even when I could not always go as far as she wished—although I will admit with no apology that more often than not I took her advice, because she urged me in directions my conscience knew I should take and my judgment told me the country should take.

I was first introduced to Althea Simmons by my good friend and her predecessor, Clarence Mitchell, and I learned quickly to value her, too, as a friend, my friend. No matter how keenly she felt her cause in a given instance, I knew she would not ask me to do anything I found personnally disagreeable or damaging—not simply to make it easier for her to come back and fight another day, but even more to make it possible for me to do better on another day. And no matter how much I might fall short of her standard on a given occasion, she would not convert her disappointment with me into a personal grievance—not simply to avoid offending me, but even more to avoid offending her own sense of values and her own definition of friendship.

She was a friend in need who struck the right note with no overtones of quid pro quo—when I was deciding whether to withdrew from the campaign for the presidential nomination, she wrote to argue, touchingly, that I should not; and when I had a brush with death a few months later, she wrote, warmly, of her alarm, her sympathy for my family and her relief at my recovery. And she wrote not as Althea the lobbyist, dashing off some practiced boilerplate, but as Althea, my friend, sharing her own matchless strength and unalloyed courage—not because I was a Senator, not because I chaired the Judiciary Committee that was the avenue to most of her goals, but because she was Althea, she was my friend, and she cared. I will miss her more than I can say, but I will never forget her.

None of us—in the Senate, in the House, among her fellow toilers in the vineyard of civil rights, and most of all among her friends—will ever forget Althea Simmons, and she will not lack for monuments, for she built her own in a lifetime of dedication to the welfare of those for whom and among whom she worked for many years in the field, to the civil rights which are the most precious possession of all Americans, and to the even greater future of the great Nation she loved and labored for.

We will never say goodbye to the memory of Althea Simmons, but we can offer her an epitaph in action, and I believe there is no better place to find the prescription for it than in the words of her good friend, our good friend—the affectionately titled "101st Senator"—Clarence Mitchell, who could not have spoken better for Althea Simmons than when he said, "What is important is building a democracy that is a shield for the humble and the weak as well as a sword for the strong and the just." And that is how we will best remember her. Each day we move closer to providing America with the shield and sword of that demoracy, each day we act in this place to preserve and extend the civil rights and civil liberties to which she dedicated her life, we bring Althea Simmons' dream closer to the reality she was sure it would one day achieve, and we hold her closer to our hearts.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,013th day that Terry Anderson has been held captive in Beirut.

Since the August 2 invasion of Kuwait, two significant questions have gone unanswered. What has become of the da'wa prisoners? And how will their fate affect the hostages in Lebanon held by Islamic Jihad?

Last week we heard reports that these prisoners had been "turned over" to Iran. That Imad Mughniyeh's brother-in-law is in the hands of a longtime ally. Yesterday, the Associated Press reported that Iran's Ambassador to Pakistan, Javad Mansoori, "refused to elaborate but said Teheran has received 'promises' from pro-Iranian groups holding the hostages in Lebanon."

In a thorough special to the New York Times, Elaine Sciolino notes these developments as well as the administration's acknowledgment that "the invasion may have indirectly improved the chances of freeing American hostages long held in Lebanon." Mr. President, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 19, 1990]

IRAN, HOLDING KEY, HINTS AT HOSTAGE RELEASE

(By Elaine Sciolino)

WASHINGTON, September 18.—Iraq's invasion of Kuwait may have indirectly improved the chances of freeing American hostages long held in Lebanon, Administration officials said today.

In the confusion of the invasion, a group of prisoners whose fate is tied to that of the hostages were freed and are now in the hands of the Iranian authorities, the officials said. Iran has considerable influence over the Shiite Muslim factions linked to the fundamentalist Party of God, which holds most of the 12 Western hostages in Lebanon.

In 1983, 17 men were imprisoned in Kuwait for conducting a terrorist campaign against the American and French embassies and public buildings and oil installations. The primary condition for the release of some of the Western hostages was freedom for these prisoners, Iraqis who belong to Al Dawa, or The Call, a radical Shiite Muslim group outlawed by President Saddam Hussein of Iraq that was dedicated to exporting Iran's revolution.

ASSAD TO VISIT TEHERAN

The first official hint of a possible hostage release came in statements today by Javad Mansoori, Iran's Ambassador to Pakistan, who said that some hostages may be freed in the next few days. "The number and when is not known," Mr. Mansoori said at a news conference in Islamabad, The Associated Press reported. The Ambassador added that Iran had received "promises" from pro-Iranian groups holding the hostages in Lebanon.

In Damascus, President Hafez al-Assad of Syria announced that he will visit Teheran next week, where the fate of the hostages is expected to be one of the main topics. Syria, Iran's main Arab ally and the primary

power broker in Lebanon, has helped bring about earlier hostage releases.

Islamic Holy War, a pro-Iranian group, has repeatedy demanded the release of the prisoners as a condition for freeing its hostages, Terry A. Anderson, the chief Middle East correspondent of The Associated Press, and Thomas Sutherland, dean of agriculture at the American University of Beirut, who have both been held since 1985. The leader of Islamic Holy War, Imad Mugniyah, is the brother-in-law of one of the prisoners.

"Iran has always had some ability to influence the hostage takers, but now their influence is greatly enhanced," said Zalmay Khalizad, a senior analyst at the RAND Corporation and a former State Department official who followed Iran and Iraq.

The Kuwait Government, with strong United States support, consistently refused to bargain the prisoners for the hostages. But Iran has varying degrees of leverage over the loosely knit terrorist groups known collectively as the Party of God that hold six Americans, three Britons, two West Germans and an Italian.

The Teheran Government has occasionally used its influence to win the release of Western hostages, and President Hashemi Rafsanjani hostages in Lebanon should be freed.

When Kuwait was invaded, 15 of the Dawa prisoners were still being held and 2 had been released after serving five-year sentences.

Administration officials do not agree on how the prisoners fell into Iranian hands. Some say that during the invasion the 15 prisoners escaped from the high-security Salibeyeh Prison. Most made their way to Iran, although some are believed to have fled elsewhere, probably to Lebanon, these officials said. Other officials believe that the prisoners were seized by Iraqi troops, taken to Baghdad and handed over to Iran to win concessions from Teheran. Baghdad has reportedly been trying to induce Teheran to help break the economic embargo imposed on Iraq after the invasion of Kuwait.

"They were scooped up within 24 to 36 hours of the invasion and taken to Baghdad to be bargained," said an Administration official who closely follows Iran. "They were turned over to Iran as a conscious act of policy."

The release of the American hostages is of deep concern in the Bush Administration. Secretary of State James A. Baker 3d told reporters that he discussed the issue in his meeting last week with President Assad of Syria.

Mr. Baker said he stressed the importance of the hostages' release and thanked Mr. Assad for his past efforts to win freedom for some of those held. Mr. Assad did not indicate that he thought the hostages would be freed soon Mr. Baker said.

Since the invasion of Kuwait, the Bush Administration has begun a concerted public and private diplomacy campaign to send Iran three basic messages that Washington wants to improve relations with Teheran, that it is in Iran's interest to comply with the global embargo of Iraq and that American forces in Saudi Arabia are not a threat to the Teheran Government.

Days after the invasion, there were unconfirmed reports that the Dawa prisoners had been rounded up and taken to Baghdad for execution. Kuwait's chargé d'affaires in Jordan, Faisal al-Mukhaizem, was quoted as having said that the prisoners were taken to Baghdad and that the Iraqis planned "to use them as bargaining counters."

Two weeks after the invasion, a Lebanese man who fled from the Kuwait prison said the Dawa prisoners were at large in Kuwait and waiting to flee to Iran, United Press International reported from Tyre, Lebanon, on Aug. 18. The agency quoted the Lebanese, Abdel Aziz Krayem, a 40-year-old Shiite Muslim who was serving a 15-year term for masterminding bombings in Kuwait, as having said the prisoners fled after some family members of Kuwaiti prisoners "just disappeared into the streets of Kuwait," U.P.I. quoted Mr. Krayam as having said.

TRIBUTE TO ALTHEA T.L. SIMMONS, ESQ.

Mr. HEFLIN. Mr. President, in March of this year, I gave a floor speech entitled, "National Bar Association Honors Mayor David Dinkins and Attorney Althea Simmons." I wish to reiterate excerpts from that floor speech at this time.

Mr. President, I have known Attorney Althea T.L. Simmons ever since she succeeded the late Clarence Mitchell as Chief Congressional Lobbyist for the Washington, D.C., Bureau of the NAACP. Although he was a very tough act to follow on Capitol Hill, Althea has met the challenge of becoming a good lobbyist by walking quietly in her own footsteps.

One of my colleagues and friends on the Senate Judiciary Committee, Orrin Hatch, has said of Althea, "She's one of the most effective, intelligent lobbyist on the Hill today. * * * She knows the issues and pushes them with a great deal of aplomb. * * * She's had a great influence on me."

She has worked quietly behind the scenes with other civil rights groups to help win such legislative victories as the extension of The Voting Rights Act, The MLK, Jr., Birthday National Holiday Bill, and a bill imposing sanctions against South Africa.

Mr. President, I regret very much to say that Althea will be unable to accept her Gertrude E. Rush Award in person on Saturday, March 24th. It is my understanding that she has been an inpatient at the Howard University Hospital since around the first of November, 1989. Her discharge date is still uncertain. Nevertheless, I still wish to congratulate her and wish for her speedy return to her job and to Capitol Hill!

Mr President, last week the national civil rights community lost one of its most dynamic advocates—Althea T.L. Simmons. She will be eulogized tomorrow at the Asbury United Methodist Church here in Washington, DC.

As I understand it, tomorrow's funeral services will celebrate her life. In fact, the obituary has been designated euphemistically, "Reflections on a Life."

Mr. President, I ask unanimous consent that these reflections be printed in the RECORD.

There being no objection, the obituary was ordered to be sprinted in the RECORD, as follows:

REFLECTIONS ON A LIFE, ALTHEA T.L. SIMMONS-APRIL 17, 1924-SEPTEMBER 13, 1990

Universally, the oak tree symbolizes all that is good on earth. Early in the night of September 13, 1990, a mighty oak tree fell! Like a giant, towering, majestic oak, Althea, too, had expansive roots, branches, and leaves. Her great life was enduring, endeavoring, endearing, and energizing. The acorns from her tree have been scattered far and wide; while many have reached maturity, others are only now taking root.

Althea's strong roots touched the lives of many people. As Associate Director of Branch and Field Services of the NAACP, she had the responsibility of supervising its nationwide network of branches, field staff and the Membership and Youth and College Division. During her 28 years of service with the NAACP, she also held posts of National Education Director, National Training Director, Special Voter Registration Projects Director, and Director of the NAACP's 1964 voter registration drive.

Althea's true greatness was tried, tested, measured, and proven when she was tapped to be the successor to then retiring Clarence Mitchell as Chief Congressional Lobbyist for the Washington D.C. Bureau of the NAACP. She earned the reputation of being "one of the most effective, intelligent lobbyist on the Hill * * *"—strong, sturdy, reliable, renewing.

Althea's branches spread far and wide. She served:

As Chair of the Judicial Selection Committee of the National Bar Association;

On the editorial board of Integrated Education;

On the Board of the National Council on the Aging;

On the Executive Board of Delta Sigma Theta Sorority, Inc., as Co-Chair of the Commission of Social Action;

As former Chair of the Administrative Board of the Asbury United Methodist Church;

As a member of the General Board of Pensions of the United Methodist Church, where she was a member of the Committees on Corporate Fiduciary Responsibility, and Appeals; and chaired the Committee on Legal Concerns; and

As Committee Chair for a number of other national organizations.

Althea had strong educational roots—Southern University (LA); the University of Illinois; Howard University School of Law; and others. She received numerous awards and recognitions professionally, as well as for community services and civil and human rights.

Althea is survived by a sister, Earldean V.S. Robbins, of San Francisco; four nieces—Robin Simmons Robins, Alfreda Wall, Jacqueline Glover, and Sharon Simmons; and three nephews—Brett Simmons Robins, Michael and Darryl Simmons.

Compassionate, dedicated, and with a deep sense of justice, this generous life appeared as a mighty oak; and "* * * only God can make a tree."

Mr. DIXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KERRY). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DIXON. Mr. President, I ask unanimous consent that I be able to

proceed under morning business for a very brief period of time.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACID RAIN

Mr. DIXON. Mr. President, I rise today to call the attention of my distinguished colleagues to the recently released findings of the National Acid Precipitation Program. After a 10-year, $537 million study of acid rain, the report concludes that acid rain is in fact a long-term problem, but not the crisis we have been led to believe.

My purpose is not to deny our responsibility to mitigate the effects of acid rain. It is simply to make the case, once again, that it is absurdly unfair to ask just 9 States to account for 90 percent of acid rain reductions in the first phase, when those 9 States account for only 51 percent of total sulfur dioxide emissions. This is especially onerous when, at the same time, 18 other States will actually be allowed to increase their sulfur dioxide utility emissions. Acid rain is a national problem whose burden should rightfully be shared nationally.

To paraphrase an editorial from yesterday's Chicago Sun-Times, the acid rain title of the Clean Air Act will shaft the Midwest. Mr. President, I ask unanimous consent that the article referred to, written by Mr. Dennis Byrne, be reproduced in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DIXON. Mr. Byrne points out, as I have many times, that the acid rain restrictions imposed by the Clean Air Act will increase some Midwest consumer's electric bills by as much as 25 percent and cost thousands of Illinois coal miners their jobs.

Interestingly enough, we are now hearing reports that while acid rain is certainly not benign, the emissions that are responsible for acid rain may actually help slow the advance of global warming.

Those of us from the industrial Midwest who were not represented on the committee that reported the acid rain title, offered proposals to share the cost of the clean up through generation fees, excess emission fees, industrial emission fees, and through tax credits for those that were required to make disproportionate reductions. Any of those proposals would have restored a little bit of equity to the acid rain reduction plan. Regretably, all were defeated.

Mr. President, at a time when our future energy costs remain uncertain, and additional energy taxes are being considered as a means of reducing our budget deficit, the findings of the national acid rain precipitation program report provides further support for the Clean Air Act conferees to restore some sort of equity to the acid rain provisions. We are not asking for a handout, Mr. President. We are asking for simple equity.

Mr. President, I ask unanimous consent that an editorial that appeared in the Chicago Sun Times September 10, be printed in the RECORD, and I yield the floor.

There being no objection, the article was ordered to be printed in the RECORD, AS FOLLOWS:

[From the Chicago Sun-Times, Sept. 10, 1990]

EASE ACID-RAIN PROVISIONS IN BILL

After 10 years, it's official: Acid rain is a long-term problem, but not an environmental emergency or crisis, as feared when the government began its $537 million study of acid rain in 1980.

The scientific report by the National Acid Disposition Program appears to support the judgment of Illinois' two senators, Democrats Alan J. Dixon and Paul Simon. They voted against the Clear Air Act last spring because, they said, its acid-rain provisions imposed unnecessarily harsh financial burdens on Illinois industry and would cost the state 18,000 jobs.

The report should encourage lawmakers to remove or soften those provisions in the Senate-House conference committee now wrangling over differences in the legislation.

The federal study should set the framework for further discussion on acid rain, which has generated more emotion than light in debate within the scientific, political and environmental communities. Two points in the study should be kept in mind:

Acid rain (emissions of sulfur dioxide and nitrogen oxides, mainly from coal-fired power plants) indeed damages the environment, threatening aquatic life in about 10 percent of streams in the East, possibly affecting sugar-maple forests in eastern Canada, reducing visibility in urban areas of the West, and helping to cause erosion and corrosion of stone and metal structures.

The degree of damage and potential damage in any of these areas is considerable less than estimated by alarmists.

These findings are particularly important to the Midwest, which has the country's largest concentration of coal-dependent utilities. Control measures that would be made necessary by the Clean Air Act, as now written, would run into the billions of dollars.

With fewer scientific uncertainties about acid-rain damage, government now can take the guesswork out of proposed regulations and work on the problem without costly disruption of heartland industry.

EXHIBIT 1

[From the Chicago Sun-Times, Sept. 18, 1990]

ACID RAIN RULES WILL SHAFT MIDWEST

(By Dennis Byrne)

Midwesterners are about to get shafted by Congress, and few people seem to care.

Thousands are going to lose their jobs and millions will have to cough up a ton of money to satisfy some East and West coast ideologues. But, so what? We're only Midwesterners.

The shafting is about to be applied by a congressional conference committee that, unless the sky falls in, will impose acid rain restrictions that will jack up some Midwest consumers' electric bills by as much as 25 percent and cost thousands of Illinois miners of high-sulfur coal their jobs.

All because it is an article of faith that emissions from Midwest power plants are destroying East Coast life forms. An article of faith, but not an article of science.

The latest scientific evidence to question the acid rain crisis-mongers comes from one of the most thorough, most expensive scientific studies ever conducted in this nation—the 10-year, $500 million National Acid Precipitation Program. It has tentatively concluded that acid rain is a problem, but not the crisis we're required to believe.

Yes, acid rain is helping to corrode stone and metal, and yes, it is reducing the ability of some high mountain trees to withstand the cold. But the program found that acid damage to eastern lakes is much less than the worst fears; that some tree damage may be more due to local soil conditions than to Midwest pollutants; that the evidence is lacking that acid rain in the United States harms crops. And on and on.

This isn't news. Scientists long have questioned the popular widom on acid rain. They have pointed out, for example, that the worst acid lake problems are in Florida, which does not receive high concentrations of acid rain. Other scientists are uncharacteristically passionate, calling the issue the "great acid rain flimflam."

All Congress had to do to discover that this is not a settled issue was consult the scientific literature. Instead, Congress consulted the likes of Rep. Henry A. Waxman (D-Calif.), who considers himself to be some kind of environmental czar whose word is law. Or Denis Hayes, the Earth Day 1990 chairman. A few months ago, when I asked Hayes for his opinion on the coming acid precipitation study results, he didn't have a clue to what I was talking about.

Most disappointing is the silence of the people in this state who strut around, claiming to represent the little guy against the ravages of high utility rates and big business greed. Not a word have we heard from them, because they would rather see rates go up or the little guy get fired than find themselves on the same side as a big, ugly utility in seeking to moderate the proposed acid rain restrictions. They would rather let some people join the unemployment line than find themselves on the same side as—ugh—Ronald Reagan who, albeit possibly in ignorance, questioned the seriousness of the acid rain problem.

I'm an environmentalist; some environmentalists think I am, too. But I am because that's where the scientific evidence leads me, not because of some feel-good, emotional high I get from being on the side of good, clean earth, sky and water. There's no better way to destroy the environmental movement than to base it on the emotional smog that energizes acid rain legislation.

Mr. DIXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Members of the Senate, Senators HATCH, METZENBAUM, PRYOR, HEINZ, and others who are principally involved in managing this legislation have been meeting throughout the day in an effort to resolve their differences and possibly reach an agreement that might enable the Senate to promptly dispose of this legislation.

Those discussions continue and, in order to permit them to go forward without inconvenience, I am momentarily going to suggest that the Senate stand in recess until 2 p.m. at which time we will be in a position to report to Senators on progress that has been made. I hope that we will be able to complete action on the bill today either by virtue of that agreement or even absent that. If we are unable to do so, then of course a cloture vote will occur tomorrow, cloture having been filed on the bill last evening.

So as to permit them to proceed and, hopefully, to reach agreement, Mr. President, I now ask unanimous consent that Senator GRAHAM of Florida be recognized to address the Senate, and that upon the completion of his remarks, the Senate stand in recess until 2 p.m.

I further ask unanimous consent that Senators still be permitted to file amendments until the hour of 1 p.m., under the cloture rule, as would be the case were the Senate in session during the time between now and 1 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I thank my colleagues and I thank the Senator from Florida for his patience.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 2075 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KERREY. Mr. President, I ask unanimous consent to be permitted to speak as if in morning business and, as under the previous order, the Senate go into recess at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE GULF CRISIS

Mr. KERREY. Mr. President, since Iraq's invasion of Kuwait last month and our response, the United States and the world's response to this brutal and illegal action, I have been personally and greatly troubled. Something in all of the rationale and all the explanations seems to be missing.

At first the missing piece was what the President did not tell the American people. Speaking to a nation that knew very little about Saddam Hussein, he filled in the blank with a picture of Adolf Hitler. This was more than a comparison. It was the rationale; the call to arms; it would become the motivator of the troops, the explanation for domestic sacrifice, and the answer given when a mother and father stood sadly together before a photograph of their son in uniform to ask: Why?

Missing was the story of years of American support for this modern Hitler—support from Commerce Department, support from our Ambassador to Iraq, support which continued in the face of direct evidence that Iraq might be only hours away from invading Kuwait. Missing was an explanation of why this modern Hitler's territorial designs on oil-rich Kuwait threatened America's vital interests, if his designs on Iran had not. Missing was a discussion of whether an internationally coordinated economic embargo, which would have been inadequate to the threat of Adolf Hitler, will enable us to accomplish our goals in the gulf, as I believe it will.

The President's address to Congress last week suggests his rhetoric has cooled. The references to Hitler are gone.

Still, in the early days of our response Saddam Hussein had become Adolf Hitler in the minds of man—and I believe probably a majority—of Americans. The threat of Iraq had eclipsed all others including the Soviet Union, against whose extinguished threat we nonetheless continue to deploy the lion's share of our defense structure.

The President's invocation of Hitler brought a public response that gave him permission to do whatever he had to do, to use whatever force was necessary to stop Saddam Hussein because "if you didn't stop him here, the next thing you know he would be in control of the world." That was, and is, our cause.

Why does it matter, Mr. President, that the threat was originally overdrawn or drawn at least in very fuzzy lines? Was not Saudi Arabia at risk? Yes, it was. And if, as the President says, intelligence indicated an invasion of Saudi Arabia was imminent, was he not justified in deploying American troops? Yes, he was.

However, I continue to feel strong personal reservations about the nature and extent of our commitment, because the scope of the threat invoked by the President does not seem to be reflected in the attitude of many of the the soldiers in Saudi Arabia who were shouting at Gen. Colin Powell last week: When do we get to go home and why did you take away our basic allowance for quarters?

And it did not seem to be on the minds of many in Congress last Tuesday evening as they shouted their most enthusiastic response to the Commander in Chief when he proposed to reopen the capital gains tax loophole.

Missing is the grim-faced attitude of people who really believe that the United States or at least an important strategic asset, is at risk. Missing is the conviction that we must fight with out lives because we are fighting for our lives. In short, when the President says this is the first cold war test of our mettle, it simply, honestly does not feel like it.

The war which influences George Bush began because of Adolf Hitler. The allied effort was successful because the evil of Hitler and his plan became clearer to Americans as the war, and the sacrifice required to wage it, progressed. At the moment of victory we rejoiced and wept and were thankful to be alive and free. This sense of gratitude was fundamental for a generation of Americans who knew what they had accomplished but could not possibly brag about it.

The war which influences me began because of a need to contain communism. We failed in that war because our enemy was not complaining about the lack of a housing allowance or asking when they were going to be rotated home. We failed because in the end our leaders had not adequately convinced the American people that the Communist Ho Chi Minh was a threat requiring our prolonged sacrifice.

I had begun to believe that we in this Nation could act differently this time. Now, I am not so sure. I am profoundly uneasy about the instant deployment of over 100,000 American troops, sold to the American people on false assertions that Saddam Hussein is Adolf Hitler, that our way of life is at clear and present danger, that we have as much at stake as we did in World War II. I am personally angry at Colin Powell for not recognizing that his own troops—professional, loyal, capable—do not possess the clear and essential understanding of why they have been called to battle.

At this moment I believe our military action was improperly rationalized, incompletely thought out, and dangerous. It is dangerous because it could provoke the war we seek to prevent. It is dangerous because it could create the instability we seek to avoid. It is dangerous because the countries with the most to lose—Kuwait and Saudi Arabia—did the least to prepare for this invasion.

One of the most disturbing assumptions in all of this is the one that declares: If we do not defang Hussein now, he will just be back in a few years to do the same thing. The assumption here is that we should remove with force what we have never in earnest

attempted to remove through other means. Recall that not long ago our Commerce Department was cabling "Hooray for you!" to American entrepreneurs seeking to export nuclear weapons technology to Iraq. The assumption here is also that we—the United States and the world—will go to sleep in the down-filled bed of moral relativism again. This will not happen. Indeed, once this crisis has cleared, we may find that Saddam Hussein is the 20th century's greatest gift to the urgent cause of controlling the spread of chemical and nuclear weapons and technology.

One of the best ways to evaluate and to see how the missing elements have distorted our own thinking is the near universal appeal of the burden sharing argument. It is everyone's favorite theme. It is bad enough that we are so fiscally overextended that we must import capital to pay for current consumption. It is bad enough that we are already borrowing 25 cents of each dollar in every soldier's paycheck because of the deficit. It is bad enough that we are asking young men and women to fight for our economic health abroad while we refuse to join their courage with our own by dealing with the deficit at home. What makes it worse is that we turn good news into bad. The outrage expressed over Germany's agreement to pay the Soviet Union $8 billion to withdraw their troops is a case in point. Would we prefer to have that $8 billion go to the Middle East if it meant leaving 360,000 Soviet soldiers in Germany? What nonsense we can preach when our soap box is flimsily built.

I repeat: Something seems to be missing. But it is not hope. We can still accomplish the good goals that the President has laid before the American people. We can build on the international accomplishments of the President in bringing almost all the nations of the world to focus their attention to develop pressure to bear on this blunt insult to international standards of behavior and decency.

What is needed, above all, is honesty. Our actions in the gulf cannot go beyond the confines of informed public consent and informed public support as well. Americans, neither ignorant nor gullible, are aware that our official policy until recently backed Iraq; that America's "way of life" was not threatened when Iraq, with out encouragement, sought to conquer Iran. The President owes our troops and our people a clear discussion of our interests—one which squares our past policies with our current goals. The memory of the American people is strong enough to understand when recent history has been sacrificed to the cause of persuasion. Our understanding is subtle enough to know that not all alarms are broadcast with the same piercing volume. Our men and women in uniform are dear enough that we owe them our last full measure of candor before we ask them for their last full measure of devotion.

Just imagine what it would have been like if the President had addressed the American people in early August with such candor. Imagine if he had informed us of Iraq's brutality against Kuwait, but also the extent of our previous complacency with the growing threat of Iraq's growing military force. Imagine if he had drawn the line in the Saudi sand, but also contrasted that line to the messages we had been sending Saddam Hussein prior to that invasion—messages which now appear foolishly tolerant and dangerously compliant. Imagine if he had told us of his willingness to comply with a Saudi request for armed support, but also shown us the intelligence photographs which made Saudi fears credible. Imagine if he had told us of the need to take arms to defend a new world order, but also explained exactly what that new world order is, and why we must be willing to fight for it. Mr. President, I believe that such a straightforward discussion of the crisis would have generated public support with a difference, and that is the difference between the silent assent of public opinion polls and the active support of an informed people.

Candor is not always comforting, of course. We were reminded of that truth in the past week by the candid interview and firing of Air Force Chief of Staff Michael Dugan. He deserved the demotion, but he also deserves some appreciation for giving the American people a few things they will need to make judgments—critical since we may be about to send American youth to die for us—about our policy in the Middle East.

Before I look at the cutting questions raised by General Dugan I would like to raise some objections to a Presidential suggestion which may fall into the category of background noise unless a protest is voiced: His announced decision to sell Saudi Arabia $20 billion worth of arms.

Like the President's idea of forgiving $7 dollars' worth of Egyptian debt this one appears to make sense on the surface. Unlike the Egyptian proposal—which would presumably reduce revenues in our Treasury—this one has more appeal because an arms sale will bring money into our economy. The United States finished the decade of the 1980's with its arms manufacturing superiority intact; and Saudi Arabia—its coffers bulging with $40 billion a year new money since the world's economic embargo of Iraq—is an arms salesman's notion of heaven: A customer who hates credit.

Allow me to weigh in with a few reasons this arms sale should be voided by a congressional veto:

First, it is simply wrong. The new world order described vaguely by the President surely does not mean a continuation of this old practice of selling weapons to the enemy of our enemy. Saudi Arabia's King Fahd is opposed to Saddam Hussein just as Saddam Hussein was opposed to Khomeni. Thus, King Fahd qualifies for the largest arms sale in the history of man's conduct in such activities. More commendable, I believe, as an example of national behavior in President Bush's new world order is that taken by Czechoslovakian Foreign Minister Jiri Dientsbier who withdrew his country from the international arms bazaar offering this as his justification: It is wrong. Mr. Dientsbier is right.

Developing a domestic economic strategy which will enable us to manufacture alternative goods will not be easy but it clearly is not impossible. Ours is not an absolute choice between jobs at home and moral principle abroad.

The third objective of the President is also the second reason I object: stability in the Middle East. It is upset with this sale. Already Israel has requested assistance in maintaining their edge and Israel—already hard pressed to handle the inflow of Soviet refugees—will not be so adverse to credit as the Saudis.

Third, the possession of weapons does not elaborate to the will to fight.

There is nothing in the current crisis which testifies to Saudi Arabia's willingness to fight, even in self-defense. More arms and more sophisticated arms will only make Saudi Arabia a more attractive target, Mr. President. We should recall that many of the arms we sold to the Shah quickly became the property of the Ayatollah Khomeini.

Fourth, when Saddam Hussein's Iraq no longer looms as the world's greatest threat to peace and stability, as it is today, who will Saudi Arabia's enemy be? Will they pick another of our enemies, or will they pick a friend like Israel? The condition which requires this question necessitates a polite and respectful no to the President's request.

Twenty billion dollars is a lot of money, Mr. President, for an economy struggling to keep its head above the recessionary waters swirling around us. However, we should be careful—very careful—not to let our foreign policy be completely dominated by the concerns of those who sell oil and weapons. Money stuck in our eye blinded us to the moral danger of Saddam Hussein in the first place, and we should not let it blind us to other dangers now.

Some who are arguing for the selection of the military option in the Middle East are unable to see any

other possibility. At one level, I agree: Saddam Hussein will not respond to kind words and obsequious agreement such as he has enjoyed from the United States prior to his invasion of Kuwait. He will not yield to our moral objectives—withdrawal from Kuwait, domestic human rights, demilitarization and democracy—unless he hears the foot steps of our military force.

Policymakers in the United States, on the other hand, dare not delude themselves into thinking that we do not need to debate what we are doing and to state our disagreements where they exist. A failure to do this—a simple and blind acceptance of everything the President as Commander in Chief does—will lead to bad policy and the potential loss of clear public support for what we are doing.

For this is the first post cold war use of force. If the American people discover that we have not taken appropriate care, then our mettle will have been tested and found wanting.

A good example of this is the incident involving General Dugan. Some of what General Dugan said did jeopardize our strategy in the gulf, but some of his candid remarks, I believe, could be helpful today.

In his interview he said: "Whether raining destruction would effect the withdrawal from Kuwait or Saddam's ouster is a political decision the President and others must make." We in the Congress are included in the "others," and we need to be asking ourselves that question. For my part, I answer the question negatively.

The fact of destruction raining from the skies may not get Saddam Hussein to withdraw from Kuwait, but the thought of it could get him to do the right thing. Mr. President, I believe the anticipation of pain is always worse than the pain itself. And thus we should use that fact, I believe, to force Saddam Hussein to do what he and all of us understand that eventually he must do.

That is why I believe United States policy should include, at the earliest moment, a joint high level visit to Baghdad by the United States and the Soviet Union, not just representing these two nations, but the entire world community. These two former adversaries, now united in purpose to oppose Saddam Hussein's invasion and occupation of Kuwait, I believe, could represent a substantial message to Baghdad and Saddam Hussein.

I believe our Secretary of State, and the Soviet Foreign Minister, should personally state our insistence to Iraq's leaders that our economic embargo will tighten, and our sword will hang over their heads, as long as Iraq holds Kuwait under its subjugation. Mr. Baker and Mr. Shevardnadze should use the weight of their own presence to emphasize the need for Iraqi satisfaction with the principles expressed in the U.N. resolutions.

Another statement illustrates how the presence of the American military forces changes both the political and the military dynamic. This one was not made by General Dugan, but by Lt. Gen. Thomas Ferguson, Commander of Aeronautical Systems Division, which is responsible for new Air Force technology. General Ferguson said this:

> If an F-117 (Stealth fighter) was shot down or crashed in Iraq, we'd go to considerable lengths—if we knew where the plane crashed—to bomb the wreckage to prevent the wreckage from reaching Baghdad.

His legitimate concern, Mr. President, for the loss of top secret technology apparently will override other considerations. This is implied in the phrase "go to considerable lengths." My colleagues may believe this is quibbling with the detail of our policy, but I assure my colleagues, it could have long-term repercussions if great civilian casualties were more acceptable than losing technology to a government which would probably not survive in the end.

Then there is General Dugan's honest evaluation that "we've already started to see the bloom come off the rose about the excitement of it all." I submit, Mr. President, this is a crucial piece of information that we dare not ignore. In our enthusiasm to support the President and to oppose Saddam Hussein, we dare not ignore this crucial piece of information.

Those of us who have little at stake but for political careers should listen to the intuitive feel from our soldiers who have a great deal more at stake.

Fortunately, there is still time for us to continue to act wisely in the gulf crisis and to benefit from the many unexpected opportunities this crisis has borne; to continue the great unity that this Nation and this world have shown in opposing Saddam Hussein.

The potential is still there for us to recognize the importance of candor; the folly of sending ever more arms to this volatile region; the inherent power of the internationally coordinated response we have helped impose; and the real possibility of building a new world order as the President describes. In short, the potential is still there to pursue a successful settlement to this conflict without the nagging sense that something is missing.

Mr. President, finally, I want to stress that this effort in the Middle East—as important as it is—cannot and should not distract us from the work here at home. Instead, we should be inspired to act even more courageously to address our growing domestic agenda. We should heed the advice of the former Chairman of the Joint Chiefs of staff, Adm. William Crowe, who strongly supports what the United States is doing in the Middle East, who answered a question about the need for defense spending cuts as follows:

> Of course. There are domestic problems plaguing the United States that must be addressed, and that means defense spending is going to have to suffer. But the health of the country demands it. Our future demands it. One of the terrible things about the Gulf crisis is that it focuses our attention on foreign affairs. but right now the most pressing problems facing this country are domestic—our infrastructure, our economy, our ability to lead the world in technology, the environment, drugs and, more important and basic than any of them, our education problems. In this sense, the reduction in military threat has come at a very good time, because as a nation we've got to turn our energy to domestic issues.

Mr. President, those are my sentiments exactly. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2 p.m.

Thereupon, at 12:37 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BURDICK].

The PRESIDING OFFICER. In my capacity as a Senator from North Dakota, I suggest the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent to be able to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 1996 SUMMER OLYMPICS IN ATLANTA, GA

Mr. NUNN. Mr. President, I rise today in celebration of the decision announced yesterday from Tokyo by the International Olympic Committee that it had named Atlanta as the host of the 1996 summer Olympics.

In Atlanta, Georgia people are quite literally dancing in the streets, last night and even today. It is an excitement that is a genuine reflection of the "can do" spirit which has marked Georgia's effort to attract the Olympics. This effort has been going on for about 3 years now. The odds were heavily against Atlanta and Georgia. It was Atlanta's bid for an Olympics and Greece, the host to the first Olympiad, was a sentimental favorite. But in typical Atlanta, GA, fashion, a small group of leaders began to think the unthinkable, and to plan the im-

possible back in 1987. And then they confidently and deliberately built a winning case for Atlanta.

Indeed, because some other communities in Georgia are also involved, including in particular, Savannah, GA—they will host some events—this can be best described as a statewise victory.

Hard work and unity were clearly the key factors in securing this Olympic bid. Atlanta was by no stretch of the imagination a likely, much less an inevitable choice. In countless presentations, meetings, and communications the members of the IOC were slowly but thoroughly, in the final analysis, convinced mainly because the energy and enthusiasm that Atlanta displayed during the bid was proof to them that these same qualities would be brought to bear on actual preparations for the games.

Mr. President, thousands of Georgians contributed to this successful culmination from government, business, labor, and community organizations and volunteers from every walk of life.

I think we ought to focus a moment today, and I would like to point out in my remarks a few people who deserved particular thanks for their efforts:

Billy Payne, president of the Atlanta Olympic Committee, has been the driving force from the very beginning. Billy has personally persuaded hundreds of leaders from the public and private sector to adopt his faith and his confidence in the possibility of an Olympiad in Atlanta beginning with perhaps his most important recruit, former Mayor Andrew Young.

Andy Young placed his considerable international prestige at the full disposal of the Atlanta Olympic Committee, and he did more than anyone else to infect the entire community with a spirit of optimism about hosting the games. Mayor Young did not even let his historic campaign for Governor of Georgia this year interfere with his truly Olympian efforts. Just 2 days after his defeat in the Democratic gubernatorial primary runoff in August, undoubtedly exhausted and understandably disappointed since he did not emerge victorious, Andy Young went right back out on the campaign trail; went to countries all over Asia and Africa to help line up votes on the International Olympic Committee—a truly remarkable and successful effort.

Andy Young's predecessor, successor also, as mayor of Atlanta, Maynard Jackson, has been another key figure in this successful drive for the 1996 Olympics here in America. The summer games will virtually remake the face of Atlanta, GA. And Mayor Jackson's constant involvement in this overall bid process has helped assure the IOC that the facilities and support necessary for a successful Olympiad will be in place when the world comes to Atlanta in 1996.

Finally, Gov. Joe Frank Harris and the State of Georgia made it plain that the bid was a statewide project that extended a commitment of true southern hospitality from all 6 million Georgians. This morning's announcement represented an appropriate benediction on Gov. Joe Frank Harris' 8 years of work toward preparing Georgia to assume a leading role in the global economy and society of the future.

I would also add a word about Gov. George Busbee, who had preceded Governor Harris as Governor of Georgia, and who also played a key role both in the preparation of our State for this great honor and in soliciting the bid itself.

Mr. President, this is an historic day for Atlanta and for Georgia. We know full well that the Olympic bid could not have succeeded without the constant assistance of other Americans who became part of the Atlanta 1996 team the moment the U.S. Olympic Committee chose our city to represent the entire country in the selection process.

I also want to add my thanks to President Bush and to Vice President Quayle for personally contacting the IOC with timely expressions of support. Secretary of State Jim Baker also took considerable time and effort from an already overburdened schedule to contact key members of the IOC, and at my request he wrote the U.S. Ambassadors several months ago and urged them to do everything possible—once we had only one city competing—to push the American city, the city of Atlanta.

The U.S. Ambassadors to nations represented on the IOC made additional entreaties and assurances that Atlanta would hold an outstanding Olympiad.

Mr. President, Atlanta and Geogria will celebrate for probably the next 2 or 3 days, but beginning next week, at least by next week, we will all begin in earnest the enormous and painstaking task of preparing for the 1996 summer games.

We ask for continued support from our fellow citizens in the difficult work ahead, and certainly we are going to need some help from the House and the Senate, and the administration.

On behalf of the people of Georgia, I thank the International Olympic Committee for the honor and the privilege it has bestowed upon our State. We are ready to become part of the Olympic tradition. Georgia will do the games proud, for when the Olympic torch arrives in Atlanta in the summer of 1996 it will illuminate a community committed to our country's proud faith in the Olympic spirit of world peace and understanding.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPORTING THE NOMINATION OF JUDGE DAVID H. SOUTER

Mr. CHAFEE. Mr. President, as have most Americans over the past few days, I have been watching closely the hearings on the nomination of Judge David Souter to be an Associate Justice of the U.S. Supreme Court. I have watched these hearings closely in order to find out more about David Souter, the jurist, and also David Souter the individual. It has been a fascinating and illuminating process, one that has helped me to arrive at a decision. I have come to the conclusion that I will support the Souter nomination, and I will vote for his confirmation when it comes before the U.S. Senate.

More than any other Supreme Court nominee in recent years, David Souter, by virtue of his quite possibly being the "fifth vote," the swing vote between liberals and conservatives, has been under intense scrutiny. It may not be fair, but it is a fact, and that fact is on everyone's mind.

In that context, I would like to take note that, given the weight of this nomination and the issues at stake for both sides, I think the President has done an extremely good job in being fair. By his own account and by that of the judge himself, no "litmus testing" took place during the judicial selection process. We have become accustomed to the charge, true or not, that judicial nominees are ideologically vetted before they are announced. Of course, that means that nominees they are greeted with a hearty dose of skepticism, which is very human and very understandable.

However, no one grilled Judge Souter or took him through a battery of philosophical tests before his selection was announced. Indeed, according to the judge, since the President's announcement last July, administration officials have helped pull together the material requested by Judge Souter, but have been scrupulously careful to avoid briefing him. That kind of process is exactly what we asked for, and I strongly commend the President and his administration for its conduct.

Judge Souter's nomination set off a whirlwind of speculation about who he is, and more importantly, what his judicial philosophy is. Despite his years on the bench and a record of 200-plus

opinions, very little was known about his philosophy on the Constitution and the rights and freedoms guaranteed therein. Thus, he began his testimony last Thursday with what might truly be called a blank slate.

I listened very carefully when Judge Souter began testifying last week. Without a doubt, his intellect and his ability to reason are outstanding. I do not think anybody will argue with those qualifications. He is clearly a legal scholar who has a phenomenal understanding and command of legal terms, concepts, and cases. His exchanges with various committee members were fascinating to watch, and educational as well. He is, I think I can say without qualification or challenge, superbly qualified to be a Supreme Court Justice.

But I think we all agree—and certainly I believe—there is more to being a Justice than having the intellectual capacity for the workings of the law. I believe there are other virtues we look for in a judge, particularly when we consider a nominee to the highest court of appeal in our land.

Yes, to a certain extent the interpretation of statutes, regulations, the Constitution, or the Bill of Rights, must be objective. But clearly the law is also open to interpretation. The Founding Fathers did not include everything in the Constitution, a brief document, briefer even than the constitution of my State. And thus, clearly the law is open to interpretation. It is made for human beings. It affects human beings. Thus, special qualities are necessary for that aspect of excelling as a Justice.

I believe the hearing process that we have watched over the past several days has revealed a man capable of carrying out that interpretative aspect of being a Supreme Court Justice, and carrying it out well. He has demonstrated the thoughtfulness and the compassion needed to understand not only the situations of those people who appear before him, but the impact that his decisions will have upon countless others whom he will never see, the millions of Americans who would be affected by the votes that he would cast as a member of that nine-person Court. He has shown himself to be a person of scrupulous fairness, a man who will extend great efforts to ensure he approaches a case with an open mind, rather than with a preordained tilt.

An open mind linked with the ability to understand people, yet with a promise of objectivity and without a personal agenda to advance, is an important part of what we seek in an outstanding jurist.

Now, clearly, there are some constitutional issues that I am deeply concerned about. At the top of this list is the constitutional right of a woman to make her own decisions about reproduction. I belive in that. In addition, I care deeply about constitutional safeguards such as the wall of separation between church and State, and also our right to freedom of speech.

Judge Souter touched on many of the subjects that are important to me. Quite clearly, he refused to elaborate on some of those subjects; most notably, abortion. He was not going to answer any questions that would lead him into a discussion of the underpinnings of Roe versus Wade. It is not possible to predict how he will come down on a woman's right to choose. But I do take hope in some of the signs that he left us with along the way.

On the personal level, he spoke from the heart about the human impact of his rulings, saying that as a judge, he knew, and I quote, for I think these are rather moving words, "Whatever we are doing, at the end of our task some human will be affected, some life will be changed by what we do."

He went on to note that in that case, "We'd better use every power in our minds and beings to get these rulings right."

At the same time, he emphasized his dedication to being fair, to the fact that he has "not got an agenda" on abortion, and will not let personal moral views either way influence him.

On a legal level, Judge Souter repeatedly endorsed the notion that there are unenumerated rights protected by the Constitution; that the constitutional reference to liberty includes nonenumerated liberties; that a fair reading shows that there are values that were intended to be protected but were not set forth in detail by the framers; and that there is a judicial mandate in discerning and defining these values and these rights. He also concurred that there is a fundamental right to privacy.

Another element he mentioned that I believe is of importance is stare decisis, where a precedent has been set. In determining the value of those prior decisions, the judge includes as a factor for consideration the impact and the costs of overturning a prior ruling: Whether it has become the basis for later decisions, whether many have relied on it to a considerable degree, and whether to change it would constitute extreme hardship in many ways.

These points expressed by Judge Souter give me heart, not only because perhaps the judge may see things as I do, but also because they seem to me to be part of a fair and careful approach to judging. There is no promise inherent in any of the statements that the judge made, and that fact is worth repeating. But if we want to take a leap of faith, Judge Souter is the best candidate, in my judgment, to take that leap with. We cannot ask for a jurist with an agenda only in the areas we care about. I think that may be impossible.

None of the points that I have discussed are clear indications of how Judge Souter might cast a vote on cases related to Roe versus Wade. Yes, he said a lot, but he made no commitments. This is very worrisome to many women and men, and, as a Senator who is strongly pro-choice, I do not take that fear lightly.

I listened carefully during the testimony of the women's groups who testified. Yesterday afternoon, just 24 hours ago, I met with Kate Michelman, of the National Abortion Rights Action League, NARAL, and Faye Wattleton, of the Planned Parenthood Federation of America. Both women explained exactly where they saw the flaws to Judge Souter's testimony, and I do not disagree with them in many ways. Yet, I do not know if anybody really knows what his words boded for the right to choose.

So what I come back to again is his absolute promise to look at each case with an open mind, tinged with considerable humanity, yet with the promise of impartiality.

I would like to take a moment to pay tribute to the Judiciary Committee, its chairman, Senator BIDEN, its ranking member, Senator THURMOND, and the other members of the committee. I think the proceedings have been extremely fair, and I think they have reflected great credit on the U.S. Senate.

David Souter, in my judgment, is a superb scholar whose intellect and integrity is beyond question. He is a thoughtful, compassionate man who promises to be a caring and a fair jurist. So, Mr. President, I will give my support to his nomination with pride and enthusiasm.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

SUPREME COURT NOMINEE JUDGE SOUTER

Mr. WARNER. Mr. President, I am pleased to have the opportunity to join my distinguished friend of many years, Senator CHAFEE. We have served together in public office almost continuously since 1969, and I think this is a particularly significant occasion that today we join again.

I wish to express my views with respect to the President's nominee for the Supreme Court, Judge Souter, at this point, which I view as the midpoint in the Senate confirmation process.

I share with Senator CHAFEE his views that the Senate Judiciary Committee has done a very able, a very fair and thorough hearing. That procedure, as we speak this afternoon, is nearing completion. I want to state

that I will participate in the debate that follows.

I said the midway point. The Senate Judiciary Committee has conducted its hearings. It will then provide each of us with a report and record which we will study, and then, take part in the floor debate of the full Senate. Each of these steps is equally important as we reach this important decision. During the floor debate, I will join those who will speak out strongly, unhesitatingly in favor of Judge Souter. I will do so for these reasons.

Since the nomination on July 23, 1990, the press, in a very responsible way on the whole, in my opinion, has provided America with an abundance of analysis and a widespread reporting of the views of citizens and groups across this Nation, pro and con this nomination.

Most important, however, we viewed Judge Souter himself, as we say in judicial parlance, "in the box" being interrogated by the Members of the Senate, withstanding thorough, fair, and wide-ranging cross-examination without limitation. He has withstood that test admirably, and I think that he has gained the respect and admiration of the members of those on the committee, certainly with the majority.

This testimony was followed by other citizens coming forward supporting his nomination and, indeed, equally important, some who did not support his nomination, for reasons which I respect, but with which I disagree.

The Senate, now at its midway point, will soon begin its floor deliberation. My support will be predicated on the following facts which I have learned from the testimony, from the widespread reporting of the press, and from private conversations with many jurists and friends whose views I respect. Most significant, I have had the opportunity to discuss my thoughts with Judge Souter personally.

Judge Souter has impeccable academic credentials and he has been a sitting judge for 12 years, 7 of which have been spent on the supreme court of his State. He is articulate, he is intelligent and thoroughly knowledgeable of the law. He has that intangible quality that all of us search for as we recommend to Presidents, under the special responsibility that we as Senators have under the Constitution, persons for the Federal bench. That quality is known as judicial temperament. It does not lend itself to clear definition, but it is one's ability to judge another that that individual will be fair and impartial as he, in turn, takes up his role on the bench and sits in judgment of others.

His testimony before the committee demonstrated a clear, logical thought process that shows a very deep respect and reverence for the Constitution and our form of government and the role of the Federal judiciary. He is a strong believer that our Constitution, which represents 2 centuries of continuous government, longer, I am told, than any other democratic form of government existing today since its adoption in the year 1776 and following. It is the oldest continuing written constitution in the world, and Judge Souter recognizes that document embodies the very principles on which this country was founded. I am heartened by his understanding of and respect for this document and his commitment to his fellow citizens to preserve and uphold our Constitution and Bill of Rights.

Equally important, Judge Souter aptly displayed his understanding of the roles courts have had in protecting civil liberties. He showed compassion, another intangible but very important characteristic of one who is about to ascend to the highest judicial post, compassion, empathy, and a sincere caring for our society in general.

This 51-year-old jurist, who celebrated his birthday during the hearings, touched us all as he impressed upon us his ability to be compassionate when he related a counseling session some 24 years ago that he had with a young woman who was pregnant and unmarried.

While he would not—and should not—reveal how he would in the future vote on any case involving human life or any other case that came before the Court, he did show, in my judgment, that he has the compassion, the sensitivity, and the understanding that we would want in a person who will sit in judgment of such issues.

For those who question whether he is in tune with society or detached therefrom, I believe that his response to this case and to others should allay their fears. His community involvement is to be admired and emulated. He was a trustee for Concord Hospital for over 12 years and served as president of the board. He is an avid hiker and a member of the Appalachian Mountain chapter, an outdoorsman, one who shares and loves our environment. As a trial judge—and this is more important, having spent a number of years myself as a trial attorney—he was exposed to the full extent of life in cases that were brought before him, life in its best and, yes, in its worst forms. He also opened the door to women in the State attorney general's office by hiring the first two female attorneys, one of whom later served as the deputy attorney general for the State of New Hampshire.

I would like to close by reading a poem that has always meant a great deal to me, just a part of it, written by a fellow Yankee many, many years ago—Henry Wadsworth Longfellow. It is that passage with which all of us are familiar:

Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate.

I dare say that when we complete the debate on this outstanding American, we, too, will remain somewhat breathless in this Chamber. But I am confident that this man, as we say in the Navy, I say to my friend, the former secretary whom I succeeded, this man has a keel that goes very deep in life. He has a center of gravity that will give him that balance not to be buffeted by the strongest of the storms of life which he will most certainly experience on this Court.

The Supreme Court is a part of that Ship of State. This man will take his position on that Court. I am optimistic that this Chamber will approve him, and he will sail on and provide us with that fairness, that equanimity which each American deserves.

I thank the Chair.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Rhode Island is recongized.

THE SOUTER NOMINATION

Mr. CHAFEE. Madam President, I commend the very moving statement of my friend for so many years, the distinguished Senator from Virginia. I think he has laid out the case extremely well for Judge Souter. I look forward, as does he, to that nomination coming soon on this floor.

I hope that that committee—and I suspect it will—will bring up the nomination fairly soon so it can come before us, because I hope we can get on with the filling of this vacancy on the Court. I think we will all look back and say we have done a good job for the United States with the confirmation of Judge Souter. So I again congratulate my distinguished friend.

Mr. WARNER. Madam President, I wish to extend my appreciation to my almost lifelong friend, the distinguished Senator from Rhode Island, JOHN CHAFEE.

THE NOMINATION OF JUDGE SOUTER

Mr. EXON. Madam President, I have listened with great interest to the very informative remarks of the Senator from Rhode Island and the Senator from Virginia. I wish to add my voice in support of the President's nominee to the Supreme Court.

I had an opportunity to read a great deal of the testimony. Not being a member of the committee, I took it upon myself to watch as much of the televised portions of that hearing as I could. I believe I had a chance to hear every member of the Judiciary Com-

mittee pose questions to the nominee and his generally excellent responses thereto.

I add my voice to what has been said and associate myself with the remarks made by the Senator from Rhode Island and my friend from Virginia, both of whom it has been my pleasure to serve with in this body for a considerable number of years. They have laid out the credentials of this individual very well. They have laid out his very exemplary record as a student and a student of the law, his distinguished career as a member of the court. I, too, feel this is an excellent nominee who should receive approval, and I will vote for the approval of Judge Souter when that nomination comes to the floor of the Senate, which I hope will be very soon.

I was asked by the press did I not think it was proper for the members of the committee to inquire in some detail about some of the views that the nominee held. My answer, Madam President, was that I certainly do think it is their responsibility to inquire. In those 3 days of testimony they inquired into about everything that one could imagine would be asked of a nominee to the Supreme Court. I was equally impressed with the excellent responses that were given by the nominee.

We do a lot of important things in the Senate, and the advise and consent process, in my view, is one of the most important, certainly with regard to the appointment of members of the Supreme Court, because members of the Supreme Court by and large are likely, by their decisions, to have a great deal to do with what laws are ruled upon, what laws and constitutional mandates are considered in the whole barrage of cases that are referred to the Supreme Court. Therefore, the Supreme Court and all of our courts of the land thereunder have a grave responsibility, the Court as a whole and individual members of that Court. There is little that we do in the advise and consent process that I take more seriously than the confirmation of members of the Supreme Court.

There was some disappointment in some circles that Judge Souter was not forthcoming, as some have phrased it, with the answers to many complicated, some of them controversial, issues that he was asked about. Some felt he should have spelled out his feelings more clearly than he did.

I concur with the general statements that have been made previously about this excellent nominee. That is, with his responses as guarded as they were, he showed above everything else a judicial temperament that I feel is critically necessary for a man in such a high, high place as a member of the Supreme Court.

I wish he had been more forthcoming on some issues. I personally would like to have seen it. But I think he was wise in making many of the statements that he did. And above everything else he showed his judicial temperament, that he would be fair in all that came before that Court for redress.

Madam President, I suggest that is all that we can ask. That is all we should expect from a member of the Supreme Court.

I was particularly impressed though with his candor, with his intellect, and emphasizing once again his judicial temperament.

Madam President, I said there is probably no more important role that we play in the U.S. Senate than the advise and consent and confirmation process of judicial appointees, most importantly the Supreme Court. As Governor of Nebraska for 8 years, I appointed more judges to the courts in Nebraska than any Governor before or that any Governor has since. I left the State of Nebraska after two terms and came here to serve Nebraska in the U.S. Senate. I judged my votes pro or con on nominees to all of the courts based on a set of guidelines that I used in appointing all of those judges in the State of Nebraska, most of whom are going to be around for a very long time dispensing justice.

I would just explain that as far as I was concerned the critical question that I asked myself as a Governor in charge of appointments was whether or not the individual—and there were men and women that I appointed, and there were members of various ethnic groups, but that was not the critically important thing. The critically important thing in my view was to have that individual as best I could judge pass the test. And the test, I said, was: If I as an individual who were appearing before this judge, would I be comfortable that this judge would fairly listen to the case presented to that judge that affected me, and would that judge be in my judgment fair and considerate in making his or her determination as the case may be?

Therefore, I have applied the same test to every vote that I have cast here, Madam President, on a member of the Federal courts. I believe that Judge Souter passes that test with flying colors. Yes. I am convinced that should I ever come before his Court I could be treated fairly and above everything else that seems to be the main criterion because if he would treat me fairly then I think it logically follows that he would very likely treat others fairly as well.

BARTER AND COUNTER TRADE WITH THE U.S.S.R.

Mr. EXON. Madam President, last week I wrote to President Bush congratulating him on the successful summit with the President of the Soviet Union and an excellent address to the Nation last week. I fully support the President's call for bipartisan cooperation, and in that spirit I offered the President a suggestion which I would like now to briefly discuss.

There is one area of potential cooperation between the United States and the Soviet Union which should be immediately pursued. Madam President, the Soviet Union sits atop of one of the world's largest supplies of oil. The United States, the breadbasket of the world, will soon harvest a bumper crop. The Soviet Union needs food, and the United States needs oil. Therefore, the simple equation of mutual benefit is good for both food producers and oil producers.

Trade with the Soviet Union and Eastern Europe and the Third World has been difficult for the United States because of the lack of hard currency in many of these markets. However, barter transactions like food for oil is a strategy which I recommend and one which I think could prove very helpful and be done with very little difficulty right now. Indeed, barter and counter trade and other similar nontraditional means of trade and finance present ideal opportunities for the United States and the Soviet Union to expand trade and development.

Not too long ago a Soviet food processing expert bound for a food conference in Nebraska said that if the United States waits for a convertible ruble, there will be no trade left. For quite some time official U.S. trade policy frowned upon barter and counter trade transactions while other trading partners in Europe and Asia used barter and counter trade to capture new and expanding markets.

Fortunately, a provision in the 1988 Omnibus Trade and Competitiveness Act, which I authored, fundamentally changed U.S. policy. U.S. trade law now encourages and supports the use of barter and counter trade to expand U.S. exports.

That legislation created an Office of Barter within the U.S. Department of Commerce and an interagency group on barter and counter trade to coordinate policy throughout several Federal agencies with trade and development responsibilities.

The Commerce Department office is now operational. And the interagency group is scheduled to have its first meeting early in October. In my letter I urged the President to instruct the Barter Office and the interagency group to immediately pursue the possibility of bartering or trading American food products for Soviet oil.

With expectations of a price depressing bumper crop of farm products, a food-for-oil strategy would be welcome news for the American farmer. Expanding the available supply of oil in

the United States would put downward pressure on oil prices.

For the Soviet Union, with its chronic food difficulties, such a transaction would prevent another winter of discontent which could cripple the process of perestroika. Certainly over the long term the United States must reduce its overall dependence on imported oil.

Like my food-for-oil strategy, the American farmer is a central force in meeting America's energy needs through the further development of ethanol fuels. However, food for oil is an option which should be pursued right now to replace oil formerly flowing from Iraq and Kuwait.

Madam President, an exchange of food for oil can help the Soviet Union reduce its bread lines and help the United States prevent future gas lines.

Madam President, I ask unanimous consent that a copy of my letter to the President be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 12, 1990.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I congratulate you on your successful summit with President Gorbachev and your inspiring speech last night. I applaud your call for bi-partisan cooperation and in that spirit offer you a suggestion.

There is one area of mutual benefit to the United States and the Soviet Union which I encourage your Administration to immediately pursue. The Soviet Union sits atop the world's largest supply of oil and the United States is truly the bread basket to the world. The Soviet Union needs food and the United States need oil. The simple equation is for the United States to exchange food for oil.

Given the Soviet Union's lact of hard currency, barter, countertrade and other similar non-traditional means of trade finance present ideal opportunities to conduct commerce. Not too long ago, a Soviet food processing expert said that if the United States waits for a convertible ruble, there will be no trade left.

The Omnibus Trade and Competitiveness Act included legislation which I authored to encourage the use of barter and countertrade to expand U.S. exports. The Trade bill created an Office of Barter within the U.S. Department of Commerce and an Interagency Group on Barter and Countertrade to coordinate policy throughout several the federal agencies.

The Commerce Department Office is now operational and the Interagency Group is scheduled to have its first meeting early in October. I urge you to instruct the Barter Office and the Interagency Group to immediately pursue the possibility of bartering American products, especially food or American oil drilling technology for Soviet oil.

An exchange of food for oil can help the Soviet Union reduce its bread lines and help the United States prevent gas lines. By expanding the available supply of oil in the United States, there should also be downward pressure on oil prices as well.

Best wishes.

Respectfully,

JIM EXON,
U.S. Senator.

JUDGE DAVID SOUTER

Mr. SPECTER. Madam President, earlier this afternoon we concluded the nomination hearings for Judge David Souter to be Associate Justice of the Supreme Court of the United States. We had long days of hearings, and some extended into the evening. I attended, as a member of the Judiciary Committee, virtually all of those hearings.

I think it is timely to state a position on Judge Souter's nomination, in the hope that we may move the process along as expeditiously as possible. I think we should not rush to judgment, but after having studied Judge Souter's record extensively, read several dozen of his opinions, and having heard the testimony of Judge Souter for almost 3 days, and the testimony of other witnesses for 2 more days, I feel in a position to come to a conclusion. I do not think we ought to rush to judgment, as I say, but if it is possible for the Senate to conclude its work on the Souter nomination in time for the first Monday in October, I think it would be a good thing.

We are not able, on many occasions, to meet deadlines because of the complexity of what we have to do. If we can meet that deadline, I think we should, and I want to pursue that to the extent that I can cooperate in that process.

During these hearings, Judge Souter really had to run between the raindrops and through a veritable hurricane. When he articulated the position of judicial activism, there were some Senators satisfied that he was not close to the original intent or original meaning; when he went to interpretivism, which is a strict constructionist doctrine, he had another situation, according to the judicial activists. When he would not state his ultimate position on the abortion issue, when it comes to Roe versus Wade, he antagonized both sides.

So in our hearings, we had people who were in favor of choice opposing his nomination, in the absence of assurances that Judge Souter would vote to support abortion. We had those who oppose abortion who were opposing his nomination on the ground that he was not giving appropriate assurances that he would support their position.

In my judgment, Judge Souter is qualified to be an Associate Justice of the Supreme Court of the United States. He has an excellent academic background—Harvard College, Harvard Law, Rhodes scholar, extensive practice as a lawyer, Attorney General of the State of New Hampshire. He has been a trial judge and a judge on the Supreme Court of the State of New Hampshire. He has written many opinions, opinions of some depth and some power.

Judge Souter displayed a powerful intellect in his testimony before the Judiciary Committee, and he combined that with a sense of humor and balance. There remains an issue as to how extensive his experience is, and in an ideal world, it might be highly desirable for him to know about what happens in the inner city of Philadelphia or Baltimore. It might be desirable for him to understand in greater detail the problems of America or America's States.

He does not have the kind of experience that perhaps Senators get when attending town meetings and visiting all the settings that are possible within our own States and beyond. He is a man of great ability. It would be this Senator's hope that he might establish on the court, with his powerful intellect, a perspective which would add a dimension to the work of the Court, not saying which way he would necessarily rule, but would provide alternatives and ideas and stimulate discussion, as the Court has to tackle the toughest problems in our society. And the Court functions on 5-to-4 decisions on all of the tough issues—not only on the question of abortion—where he could be the decisive vote one way or the other: The right to die case was decided on a 5-to-4 decision; major decisions on civil rights such as Wards Cove, 5-to-4, and Metro Broadcasting, 5-to-4; death penalty cases, 5-to-4; freedom of religion cases, 5-to-4; taxation, directing local governments to impose taxes, 5-to-4; contempt citation of the council in the city of Yonkers, 5-to-4. It is desirable, at any rate, to advance the work of the Supreme Court.

In arriving at my conclusion and judgment, Madam President, on Judge Souter, I have relied more on his written opinions than I did on his testimony. As I said, in my questioning of Judge Souter, I found a variance between his written opinions, a significant difference, and in what he testified to. I think there is a license for a nominee as there is license for a poet. I think whether you take Judge Souter's opinions or whether you take Judge Souter's testimony, he is well within the continuum of constitutional jurisprudence. I do not like the word "mainstream." But I think "continuum" is a more appropriate description of our constitutional process than "mainstream."

In his opinions, most of them had a more restrictive view of the law. But some had an expansive view. In the Richardson case, he talked about a liberty interest. That was therefore not a new concept in his testimony before the Judiciary Committee, but his view of liberty was much more expansive

when he testified than had been expressed in a variety of his opinions on the New Hampshire State Supreme Court.

He said that the incorporation doctrine, the doctrine which says that the Bill of Rights is incorporated into the due process clause of the 14th Amendment and is applicable to the States, that that panoply of rights was not the end of it, that it was just the beginning.

When he took up Justice Cardozo's articulation in Palko versus Connecticut, of conduct "essential to the concept of ordered liberty," he said that was only a beginning point. He had written in the Dionne case, which received considerable analysis, about his own judicial philosophy, going back to what he said was original meaning; that it was not quite original intent, not only what the framers intended at the time they wrote the document, but what the meaning of the words they used and the principle at that time.

But that is a substantial variance from what interpretivism means, generally, as he articulated the broad expanse of a liberty concept. But regardless of where he is pegged on the spectrum of judicial philosophy, I do believe he is well within the continuum of constitutional jurisprudence.

His opinions on criminal law issues were balanced. Some were very strong on law enforcement, but he showed a keen appreciation of constitutional rights in the context of waiver of the right to a jury trial, and the context of a nolo contendere plea being entered. There was real balance there.

In my opinion, he gave significant insight into his judicial philosophy. Frankly, I would like to have seen him answer more questions, but he had his own view on what he wanted to testify to.

On the critical question of freedom of religion, the free exercise clause in the Smith case, I thought he gave a very significant answer, where he disagreed with the majority opinion and, instead, sided with Justice O'Connor, looking for a compelling governmental purpose, narrowly tailored result to satisfy a compelling governmental interest, which this Senator thinks is very important as a cornerstone of the free exercise clause of the freedom of religion.

His response on affirmative action could have been more expansive, but he did say that race was a factor to be considered in the decisions on affirmative action, picking up on a concept of Bakke, a concept of Metro Broadcasting Co., as opposed to the narrow view of City of Richmond versus Croson.

I would have liked to have seen him be more definitive on the establishment clause, when he testified that he would not endorse Thomas Jefferson's view of a wall between church and state, would not endorse Justice Black's articulation in Everson of Jefferson's view, but instead that he found, perhaps, some limitations on that principle; but in general his support of the establishment clause and the separation of church and state did pass at least a minimal test.

I would like to have seen him testify in more definite terms about the supremacy of the Supreme Court as the final arbiter of constitutional issues. He said he did support Marbury versus Madison. You would think that in 1990, or in 1986 for that matter, when we had other Supreme Court confirmation hearings, that there would have been unequivocal support for the 1803 decision of Marbury versus Madison that the Supreme Court had the final word on the Constitution, but some of the nominees who have come to the Judiciary Committee during my 10 years in the Senate have refused to answer that question.

There is a corollary question about the authority of Congress to take away the jurisdiction of the Supreme Court on constitutional issues. And Judge Souter did not answer that question to my satisfaction, would not go as far as Chief Justice Rehnquist went in 1986 in saying that the Congress could not take away the powers of the Court on first amendment issues. Chief Justice Rehnquist would not go beyond that on other issues inexplicably, but Judge Souter would not even go as far as Judge Rehnquist did.

I pressed Judge Souter on an issue of relative power of the President as Commander in Chief under the Constitution contrasted with the authority of the Congress to declare war. I asked him the historical question: Was the Korean war constitutional and legal in the absence of a declaration of war by the Congress of the United States? He declined to answer on the ground that it might implicate a decision under the War Powers Resolution and of course I had prefaced my question noting the presence of U.S. forces in the Mideast today and how there was a delicate question that might have to be answered concerning the War Powers Resolution.

But it seemed to this Senator that asking about the Korean war was sufficiently historical. The War Powers Resolution had not been passed at that time; it did not implicate that issue. So I asked him to think it over. He thought it over long enough from Friday to Monday to tell me that he did not know. I thought that was a pretty good answer. I said so. I think that more answers ought to be "I do not know."

I notice, Madam President, the smile on your face. But very frequently we do not know. I would have liked a little more on that, but I learned a great deal from the questions Judge Souter would not answer and the non-answers which he gave, which I think he was entitled to give.

The most contentious point of all, of course, was the question of abortion. I think it is fair to say that no issue has divided this country more in its history with the exception of slavery, and, as I travel through Pennsylvania's 67 counties and beyond, that is always the tough issue. Every year on January 22, the anniversary date of Roe, many Pennsylvanians come to Washington, DC, to seek to overturn the Roe decision. And Judge Souter could not satisfy everybody. He could not really satisfy anybody. But I thought he went as far as he could.

I think there you really come down to the nub of what a nominee really can answer. But it is inappropriate for a nominee or a Justice or a judge to state what his decision would be on a case which is not yet before the Court. The process requires a case in controversy, specific facts, briefing, oral argument, deliberation among Justices, and then in that context a decision.

He did discuss the privacy issue of Griswold versus Connecticut and he did say that he recognized the privacy interest for married couples on the contraception issue. He recognized the privacy interest or liberty interest beyond but would not be any more specific; and in that context he was criticized by those who wanted a flat commitment. And not all of those who opposed his nomination asked for a flat commitment that he would uphold Roe versus Wade, but asked that he at least recognize the privacy interest requiring high scrutiny and a compelling State interest. But many who opposed said they really wanted a commitment as to where he stood on the ultimate question of sustaining or reversing Roe versus Wade. And there were those who testified exactly on the opposite side.

I believe, Madam President, that Judge Souter showed a sensitivity to the issue. He had served on a hospital board and when Roe versus Wade came down he voted in favor of making the facilities of the hospital available for abortion in the context that it was the law of the land and adequate medical care required that decision. He was severely criticized in an opinion where he reached a question that was not squarely before the Court, when in another opinion he had stated the general rule that you do not reach such a question. In that opinion, he said that doctors need not necessarily counsel on the abortion alternative on a case which involved wrongful life and wrongful death.

We had a fascinating development of the law where there used to be a claim for wrongful death if somebody was killed in a tort action. Now there is a claim for wrongful birth if the mother or father could have been advised on

abortion rights. Someone was born where there should have been abortion, and there is a fascinating development of the law in the course of the past few years.

But in the case involving the issue of wrongful birth and wrongful life, Judge Souter went beyond the parameters of the case to say that a doctor who had conscientious scruples against abortion did not have to counsel for abortion but only had to make a referral, and for that he was criticized.

We had a contention that Judge Souter was insensitive to women's rights and had an exchange with two witnesses on this subject which I think is illustrative of the kind of criticism which Judge Souter received.

There was an extensive discussion both yesterday with a witness and today with another witness in a controversial case captioned State of New Hampshire versus Richard Colbath. It involved a fascinating issue where the rape shield law came into conflict with the constitutional right of a defendant in a criminal case to confront his witnesses and cross examination.

The rape shield law provides that the defendant has no standing to testify about a woman's prior sexual conduct on the principle that it is irrelevant, whatever the women's prior sexual conduct may have been, whether a defendant in a given case committed a rape, because a woman has an unquestionable right to say no to any man at any time. So that whatever may have happened as a generalization before should not come up.

But in this Colbath case we had a very strong contention raised of judicial insensitivity on the part of Judge Souter in describing the conduct of the complaining woman and the defendant. I shall not be explicit as I was yesterday and today in questioning the witnesses. The record is there about touching and contact with very private parts of the anatomy. This was characterized by one witness as flirtation at worse and did not justify submitting questions to the jury as relevant on the issue of consent, whether there was an appropriate consideration for prejudice to the woman as opposed to the defendant's rights.

Today there was a question of insensitivity in certain language used as to the "undignified predicament of the woman." I speak at some greater length about that because I think it is illustrative of the intensity of opposition. Careful analysis and context of what a judge may properly decide as to what goes to the jury shows that Judge Souter was well within the ambit of propriety in what he had done in conduct which was totally within bounds; not his statement, as to characterizing the woman, stereotyping the woman, but analysis of evidence which was appropriate for a jury to consider on the critical question of consent.

So, Madam President, at some greater length than I would ordinarily, because on this afternoon at 3:40, there is no other Senator on the floor—we have been in a quorum call a good bit of the day; efforts are being made to work out the pending legislation which is on the floor. I have spoken at somewhat greater length than I would have under other circumstances.

Madam President, I add an addendum as to the procedure that is being undertaken. I believe that the Senate is on the right track in pursuing the issue of judicial philosophy as we exercise our constitutional responsibility to consent or not to nominations by the President.

It was only 3 years ago that an issue was present as to whether we could make an inquiry at all. And that I think has been resolved appropriately. In Judge Scalia's case in 1986, now Justice Scalia, he answered virtually none of the questions, leading a number of us on the Judiciary Committee to formulate a resolution to try to establish a minimum standard of what a nominee had to answer.

That did not have to be pursued because the intervening nomination proceedings as to Judge Bork came down, and in the context of Judge Bork's extensive writings Judge Bork answered many questions and judicial philosophy was appropriately inquired into, as it was in the confirmation proceedings as to Justice Kennedy and again now as to Judge Souter.

There is a concern, Madam President, that we may go too far in pressing nominees, as many now are insisting on answers to the ultimate question as to how the nominee will decide the next case which comes before the Court. And for reasons which I have already given, I think that is not an appropriate range of inquiry.

But there may be justification to push that boundary if the Supreme Court of the United States is to operate as a super-legislature. And we have seen the case involving the Civil Rights Act where for 18 years, from 1971 until last year, 1989, the decision of the Court in Griggs withstood the finding of business necessity and the burden of proof as to who had to show what business necessity was in a case under the Civil Rights Act, without going into great detail.

And then last year, in the decision in Wards Cove, four Justices who appeared before the Judiciary Committee in the past decade, during my tenure in the Senate, who put their hands on the Bible and swore to be restrained and not judicial activists, overturned a decision where it was clear from the 18 years of congressional inaction that the Civil Rights Act was appropriately and accurately interpreted in the Griggs case.

If the Supreme Court is to operate as a super-legislature, then it may be that the pressures will mount for nominees to give the ultimate positions on where they will be on cases that come before the Court.

Or where you have Garcia versus San Antonio contrasted with the decision of National League of Cities versus Usury where in dissenting opinions in Garcia, Chief Justice Rehnquist and Justice O'Connor stated that Garcia would be overrruled when another Justice joined the Court disposed to their position.

So that if it is a matter of personality, then I think we may see the nominees pushed for that ultimate question. But I think that is highly undesirable, Madam President, because the court nominees ought not to have to answer questions as to specific issues because the judicial process requires arguments and deliberations in a case or controversy.

Madam President, there is another consideration which is worth a brief comment, and that is on the line that there is an effort to thwart the elective balance which has been created in our society. It has been noted that the American electorate, perhaps intuitively, has chosen a Republican President and a Democratic Congress. If there is to be an agenda with which the Court will thwart the will of the elective components, then there may be a necessity to go further in the Senate asserting a greater role in the selection process.

Many would be surprised to know that, in an original draft of the Constitution, the Senate was to select the Supreme Court nominess, a function which is difficult to fathom, given our problems in deciding even lesser questions where agreement is necessary. In an early case involving John Rutledge, the Senate rejected the nominee based solely on the political ground that he had voted against the Jay Treaty.

But in Judge Souter's nomination, Madam President, there has not been an effort by the President to carry out an agenda. There was no litmus test applied Judge Souter flatly stated, as did President Bush. There was no question asked about where Judge Souter stood on the abortion question.

So, Madam President, in sum, we have a nominee who comes to the Senate, through the Judiciary Committee hearings, with an extraordinary academic background, able experience as a practicing lawyer and as a jurist, who has given a view of his judicial philosophy both in his extensive writings, some 200 opinions, and his testimony, and, notwithstanding the variance, well within the continuum of constitutional jurisprudence. I intend to support him in the committee and on the floor.

It would be my hope, in conclusion, that we will find it possible in normal processes, without rushing to judgment, to complete our action on Judge Souter in time for the first Monday in October, so that he could take a seat on the Court, which has such very important work to do.

I thank the Chair and I yield the floor.

Noting the absence of any other Senator on the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAYING FOR DESERT SHIELD

Mr. BYRD. Madam President, I support the actions that the President has taken thus far in response to the unprovoked and totally unjustifiable Iraqi invasion of Kuwait. He has acted forcefully, and, at the same time, he has helped to increase the stature of the United Nations by helping to build strong coalitions around resolutions to enforce an effective embargo against Iraq. In addition, the President and his Cabinet have engaged in a productive campaign to enlist the support of our allies and friends around the world to provide the necessary resources on the ground and in the waterways in the Middle East to deter further Iraqi aggression.

One can only speculate, but, without such expeditious and forceful actions by the President, the chances of further aggression by Iraq into Saudi Arabia may very well have already taken place.

The Department of Defense has incurred additional costs in fiscal year 1990 due to the extensive deployment of American men and equipment that has been made in the region of the Persian Gulf. I believe that we should support the request that has been submitted to the Congress for supplemental appropriations of $1.89 billion in funds to offset those heretofore unexpected expenditures at the end of the fiscal year.

The administration has made a strenuous effort to enlist financial commitments by many countries for the Desert Shield operation, and operation that very well may endure for many, many months in the next fiscal year. Reports vary on the size of the commitments to date, but they are fairly substantial, certainly running well over $10 billion. One report of Secretaries Baker and Brady's recent worldwide solicitation efforts to secure commitments of men, equipment, and financial resources indicated that the administration has set a goal of some $23 billion in such financial commitments. Other indications are that the administration expects Desert Shield to cost $15 billion in fiscal year 1991, and expects to offset that with at least $7 billion in foreign contributions. These are very large sums of money.

Madam President, I believe it is appropriate for all nations to shoulder as much of the burden, in men and money, as they can. Some countries have indicated, as have Saudi Arabia, Kuwait, the United Arab Emirates, Japan, Germany, France, and Great Britain, that they are prepared to commit large amounts of financial resources and in some cases very sizable numbers of men and equipment. I am gratified to hear of the commitments that have been made to date. These dollars will make the load on the American taxpayer easier to bear over the duration of this expensive enterprise.

However, Madam President, the existence of this emergency and the financial contributions that will be made do not provide any rationale for the President to circumvent the constitutional powers of the Congress to exercise its responsibilities over the purse. There is no legitimate reason for the administration to ask, as it has in the supplemental appropriation request, that the contributions be given directly to the Secretary of Defense so that he can dispense it pretty much as he likes without its first being appropriated out of the Treasury by the Congress.

The administration appears to be relying on the precedent of a little known statute enacted in 1954, the Defense Gift Act, chapter 26, 50 U.S.C. 1153, which was apparently enacted to allow patriotic citizens to donate small gifts into a special fund to be used for defense purposes. These small donations are supposed to go to the Treasury, which then disburses them to the Pentagon to be used in accordance with the wishes of the donating American citizens.

The statute certainly never contemplated that such a petty cash fund would be used to accept donations of billions of dollars from foreign countries, international organizations, or foreign citizens outside the normal process set up by the Constitution for the appropriation and accounting of funds.

The use of the Gift Act is completely inappropriate for this purpose. Even more inappropriate is the statutory language submitted by the administration, in its supplemental request, which would give sweeping new authority for the Secretary of Defense to accept property, services, or money from anyone and everyone to be used in the wide exercise of discretionary authority—in effect, to establish a military spending slush fund.

The Constitution, in article I, vests the power of the purse in the legislative branch. Article I, section 9, clause 7 contains a key foundation of our system of government, and it states, "no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." The administration has abided by this provision in submitting a request for $1.89 billion in supplemental appropriations to offset the increased defense expenditures associated with Desert Shield. I certainly support the request for appropriations contained in the supplemental.

In addition, as I have said, I support the financial commitments to help offset this operation by those countries and international organization that can afford it, as well as substantial commitments of forces and equipment by as many members of the international community as possible. Certainly, the Congress will want to take into account the contributions that are made to the U.S. Treasury for these purposes and will want to know about them, will want to know the amounts involved, and will want to expend them through the legislative process set forth in the Constitution.

The American people do not feel that they should foot the entire bill, so we should offset that bill as much as possible with the funds contributed from abroad. When it becomes clear how long the operation will last—and there is no way of knowing that—and how much it is costing, the administration will certainly get expeditious consideration of additional supplemental appropriations requests as we go down the road. All requests will be very carefully examined by the appropriations committees of the Congress, and the Congress will respond appropriately, I am sure.

All this, however, has nothing to do with altering the basic balance of powers of the respective branches in the Constitution. No amount of Desert Shield requirements can justify eroding the power of the legislative branch under the Constitution to appropriate money by setting aside that constitutional authority.

Madam President, I ask unanimous consent that an editorial on this subject from today's Washington Post be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

END RUN BY THE PENTAGON

Who should control the billions of dollars that foreign governments are contributing toward the cost of operation Desert Shield? The Pentagon has come up with the bright idea that it should. True, the Constitution says "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." But this is a special circumstance, the national interest is involved,

and what if the money never reaches the Treasury in the first place?

The administration's proposal is that a special gift fund be created, on which it could draw to finance the operation in the Saudi desert without having to go to Congress for step-by-step approval. Of course it would keep Congress informed and not violate congressional strictures, but . . .

Nice try, but no cigar. The face-off with Saddam Hussein should not be the pretext or precedent for a detour around the Constitution. A Congress still smarting over the extralegal funding, also from foreign sources, of the Iran-contra affair is hardly likely to authorize such a fund, nor should it, nor should a prudent administration ask.

The Pentagon is presumably anxious to make sure that as little as possible of the cost of Desert Shield is taken out of its regular budget. Defense officials may think that by paying part of the cost from a separate fund, they would reduce their exposure; there would be less left to argue about. No doubt they covet the flexibility that separate funding would provide as well.

But the foreign contributions ought to go to the Treasury, then become a resource for Congress to take into account like any other in allocating funds. The contributions are meant to reduce the burden on the U.S. government generally, not just the burden on the Pentagon. Congress has the power of the purse, and not just part of the purse, but all of it.

Mr. BYRD. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GORE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FORMER AMBASSADOR ED REISCHAUER

Mr. SIMON. Mr. President, over the August recess, I learned that a distinguished former Ambassador from the United States to Japan, Ambassador Ed Reischauer, died.

He was a teacher at Harvard, he was a scholar, he was an author. In addition to all of these things, he was a marvelous, gracious, generous human being.

He contributed to this Nation in just an infinite variety of ways but perhaps in no area was his contribution as significant as helping the United States to understand Japan a little better and helping Japan to understand the United States a little better. He spoke Japanese.

I became acquainted with him. I knew him slightly before, but President Carter appointed a commission to look at the whole question of the foreign language studies and international studies. I had the privilege of serving on that special commission, and one of the other members was Ambassador Ed Reischauer. I came to have just an immense respect for him. He was not in good health in recent years. So his death did not come as a complete shock. But what a tremendous contribution he made.

We use the term "public servant" a little too easily once in awhile. Ed Reischauer was a public servant in the finest tradition of that term. I might add that that tradition is being followed. His son, Bob Reischauer, now heads the budgetary arm for Congress. So there is a family tradition.

But Ambassador Reischauer was an absolutely superb public servant and a great human being. I wanted to take just a minute or two to pay tribute to him.

Mr. President, I request the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BINGAMAN). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that on Tuesday, September 25, at 2:30 p.m., the Senate proceed into executive session for the consideration of Executive Calendar items numbered 21 and 22; that there be 2 hours for debate on the two treaties, en bloc, to be equally divided and controlled between the chairman and ranking member of the Committee on Foreign Relations, or their designees; that the reported declarations to the resolutions be considered as having been agreed to; that no other amendments, reservations, declarations, or understandings be in order; that no motions to recommit be in order; and that at the conclusion or yielding back of time for debate of the two treaties, the Senate proceed to vote on each treaty, back to back, with no intervening action or debate.

I further ask unanimous consent that the two treaties be considered as having passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification.

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. Reserving the right to object. No objection.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. MITCHELL. Mr. President, for the information of Senators, we have been attempting for the past several hours to get agreement on a number of pending matters to organize the Senate's proceedings over the next several days, in a manner most consistent with the objective of accommodating schedules of Senators. I expect shortly to be propounding unanimous-consent requests on a number of other measures, including the measure now pending before the Senate, and at the conclusion of which I hope to be able to announce a full schedule for the Senate carrying forward from today through a week from today.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, I ask unanimous consent that if over this coming weekend, September 21 through September 23, Senators METZENBAUM and HATCH, the managers of S. 1511, the older workers bill, reach an agreement on a compromise substitute amendment, that that amendment be the only amendment in order to the bill, and that on Monday, September 24, at 5 p.m., the Senate resume consideration of S. 1511; that there then be 2 hours for debate on the agreed-upon amendment, with the time to be equally divided and controlled in the usual form; that at 7 p.m. on Monday, September 24, the Senate proceed to vote on the amendment, and then, without any intervening action or debate, adopt the committee substitute as amended and proceed to vote on final passage of the bill.

I further ask unanimous consent that if no such agreement is reached, then when the Senate resumes consideration of the bill at 5 p.m. on Monday, September 24, it be in order for Senator HATCH to offer amendment No. 2704, which was filed on Wednesday, September 19; that it be the only amendment in order, and that there be 1 hour for debate on the Hatch amendment, equally divided and controlled in the usual form; that when the time is used or yielded back on the amendment, there then be 1 hour for debate on the committee substitute, as modified and amended, equally divided and controlled in the usual form; that at 7 p.m. on Monday, September 24, the Senate proceed to vote on the Hatch amendment No. 2704; that upon disposition of the Hatch amendment No. 2704, the Senate, without any intervening action or debate, proceed to vote to adopt the committee substitute, as modified, and then proceed to vote on final passage of S. 1511, and that no motion to recommit be in order and no

points of order be waived by this agreement.

The PRESIDING OFFICER. Is there objection?

Mr. MITCHELL. I understand a clarification is requested. Accordingly, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I renew my request.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I repeat for the benefit of my colleagues what I stated earlier and indeed expand on what I stated earlier.

We are now attempting to organize a schedule in such a way that the Senate will not be voting during the upcoming 2 days of religious holiday. The House of Representatives will not be in session during that period and we are attempting to organize the Senate's schedule so that we can reach agreement on when matters will be coming up early next week in such a fashion as to permit those Senators who observe the religious holidays to do so, as they should be able to do so, and other Senators not to have their presence required during this 2-day period. That is the purpose which we have been seeking to move toward.

We have now gotten agreement with respect to two measures. We are presently working on three remaining measures and I hope very much to propound requests with respect to those other three measures shortly. In that fashion the Senate will be able to do in an organized and relatively concise timeframe business which would otherwise require us to remain in session over this period to get to, and I think that is the best way to accommodate both the public interest in moving forward on this important legislation and the convenience of as many Senators as possible.

So we will be continuing our efforts here. I hope very shortly to propound additional requests as I have just indicated and will have announcements appropriately when we do so. I thank the distinguished Republican leader and all of our colleagues on both sides for their cooperation in attempting to organize this schedule in this fashion.

Mr. President, I yield the floor.

APPOINTMENT OF CONFEREES—H.R. 4653

The PRESIDING OFFICER. Under the authority provided on September 13, 1990, with regard to H.R. 4653, the Export Administration Act, the Chair appoints Mr. RIEGLE, Mr. CRANSTON, Mr. SARBANES, Mr. GARN, and Mr. HEINZ; from the Committee on Foreign Relations solely for consideration of title I, section 117 of the Senate amendment and the specific disagreeing provision of title I, section 109 as regards the Arms Export Control Act, section 120(a), title III, and title IV of the Senate amendment: Mr. PELL, Mr. HELMS, and Mr. SARBANES; and from the Committee on Finance solely for consideration of title IV of the Senate amendment relative to sanctions on imports: Mr. BENTSEN, Mr. MOYNIHAN, and Mr. PACKWOOD, conferees on the part of the Senate.

The PRESIDING OFFICER. The Republican leader is recognized.

HONORING SENATOR STROM THURMOND FOR HIS ACHIEVEMENTS AND LIFETIME OF PUBLIC SERVICE

Mr. DOLE. Mr. President, this evening, the Non Commissioned Officers Association of the United States of America, will present its highest award to the senior Senator from South Carolina, STROM THURMOND.

It seems to me that this is an appropriate time for the full Senate to acknowledge our distinguished colleague's outstanding support for and commitment to our Nation's armed services and its veterans.

I doubt if there has ever been a more deserving choice for the Non Commissioned Officers Association's "Lifetime Legislative Achievement Award" than Senator THURMOND. His contributions to the military and veterans for more than 30 years is legendary. He continues to be one of the uniformed service member's strongest supporters, whether they serve on active duty, or in a veteran's status. Senator THURMOND has always stood tall for a strong national defense, even when support for our service men and women was under political attack.

Senator THURMOND was also instrumental in elevating the Veterans' Administration to Cabinet level status, while his work for veterans through his position on the Senate Veterans' Affairs Committee has paid off for all veterans.

Mr. President, I, too, offer my congratulations to Senator THURMOND for the Non Commissioned Officers Association "Lifetime Legislative Achievement Award."

Senator THURMOND has served his country in many ways: As an Army officer; as a circuit judge; as Governor of South Carolina; and since 1956, as the distinguished Senator from South Carolina. Senator THURMOND's record of achievement is one we can all admire and is in highest traditions of American public service.

As a proud Senate colleague, and as a World War II veteran, I say thanks.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:00 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolution, with amendments, in which it requests the concurrence of the Senate:

S.J. Res. 57. Joint resolution to establish a national policy on permanent papers.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4811. An act to expand the boundaries of the San Antonio Missions National Historical Park, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

At 10:33 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolutions:

S. 2205. An Act to designate certain lands in the State of Maine as wilderness;

S.J. Res. 313. Joint resolution deignating October 3, 1990, as "National Teacher Appreciation Day"; and

H.J. Res. 568. Joint resolution designating the week beginning September 16, 1990, as "Emergency Medical Services Week."

The enrolled bill and joint resolutions were subsequently signed by the Acting President pro tempore [Mr. LIEBERMAN].

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4811. An act to expand the boundaries of the San Antonio Missions National Historical Park, and for other purposes; to the Committee on Eenrgy and Natural Resources.

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 19, 1990, he had presented to the President of the United States the following enrolled bill and joint resolutions:

S. 963. An act to authorize a study on methods to commemorate the nationally significant highway known as Route 66, and for other purposes;

S. 2205. An act to designate certain lands in the State of Maine as wilderness.

Presented to the President of the United States, September 19, 1990;

S.J. Res. 313. Joint resolution designating October 3, 1990, as "National Teacher Appreciation Day",

S.J. Res. 331. Joint resolution to designate the week of September 23 through 29, 1990, as "Religious Freedom Week"; and

S.J. Res. 333. Joint resolution to designate the week of September 30, 1990 through October 6, 1990, as "National Job Skills Week".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S.J. Res. 14. Joint resolution proposing an amendment to the Constitution of the United States to allow the President to veto items of appropriation (Rept. No. 101-466).

S.J. Res. 23. Joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations (Rept. No. 101-466).

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 594. A bill to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes (Rept. No. 101-467).

By Mr. BURDICK, from the Committee on Appropriations, with amendments:

H.R. 5268. A bill making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1991, and for other purposes (Rept. No. 101-468).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DIXON (for himself, Mr. GRAHAM, and Mr. GARN):

S. 3073. A bill to reserve the income on depository institution reserves at the Federal Reserve Banks to protect and enhance the deposit insurance system; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ROTH:

S. 3074. A bill to amend title XVIII of the Social Security Act to provide for collection and dissemination of information on Medicare secondary payer situations from entities insuring, underwriting or administering employee group health plans, and to establish a data bank; to the Committee on Finance.

By Mr. GRAHAM:

S. 3075. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PRYOR (for himself, Mr. HEINZ, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. WARNER, Mr. HOLLINGS, Mr. CONRAD, Mr. GLENN, Mr. RIEGLE, and Mr. LEVIN):

S. 3076. A bill to provide for permanent extensions of expiring health related waiver of liability provisions; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 3077. A bill to amend the Federal Triangle Development Act relating to the financing, planning, construction, and operation of the international and cultural trade center, and for other purposes; to the Committee on Environment and Public Works.

By Mr. WIRTH:

S. 3078. A bill to protect the wilderness qualities of certain lands in the State of Colorado pending enactment of legislation designating those lands as components of the National Wilderness Preservation System or releasing those lands for other purposes; to the Committee on Energy and Natural Resources.

By Mr. McCAIN:

S. 3079. A bill to authorize the expansion of the Saguaro National Monument; to the Committee on Energy and Natural Resources.

By Mr. HELMS:

S. 3080. A bill to provide to the Federal Government and States the opportunity to acquire old military facilities for use as prisons to ensure that prisoners are not unnecessarily released early; to the Committee on Armed Services.

By Mr. ROCKEFELLER (for himself, Mr. HATCH, Mr. KENNEDY, Mr. RIEGLE, Mr. DODD, Mr. BRADLEY, Mr. JEFFORDS, Ms. MIKULSKI, Mr. SIMON, Mr. ADAMS, and Mr. PELL):

S. 3081. A bill to amend title XIX of the Social Security Act to provide better health protection for mothers and children, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. McCAIN):

S. 3082. A bill to expand the authority of the Secretary of the Interior in connection with the investment of Indian trust funds, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. DASCHLE (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. INOUYE, and Mr. McCAIN):

S. 3083. A bill to establish a tribal cattle herd pilot project, and for other purposes; to the Select Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. D'AMATO):

S. Res. 325. A resolution to recognize and commend the establishment of the Eisenhower Center for the Conservation of Human Resources at Columbia University; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DIXON (for himself, Mr. GRAHAM, and Mr. GARN):

S. 3073. A bill to use the income on depository institution reserves at the Federal Reserve Banks to protect and enhance the deposit insurance system; to the Committee on Banking, Housing, and Urban Affairs.

RESERVES TRANSFER LEGISLATION

● Mr. DIXON. Mr. President, I am today introducing, for myself and my distinguished Banking Committee colleague, Senator GRAHAM, legislation designed to further strengthen the Federal Deposit Insurance Corporation.

There is no question that the bank insurance fund of the FDIC is under stress and that the deposit insurance system would greatly benefit from an additional revenue source. Last week, the distinguished Comptroller General, Charles A. Bowsher, testified before the Banking Committee on the General Accounting Office's audit of the bank insurance fund. The testimony contains a lot of bad news. We need to keep in mind, however, that this is not the thrift situation. We are not already facing an inevitable large-scale taxpayer liability. There is time to act.

I think the GAO's testimony was, in effect, a call to action. The FDIC has acted responsibly by increasing the insurance premium the banking industry pays by over 62 percent. That change means that the bank insurance fund will have over $5 billion in premium income next year. In order to avoid the risk of future problems, though, further action is needed. Congress also needs to act promptly and decisively.

As the GAO's testimony clearly demonstrates, the bank insurance fund will likely not be able to achieve its 1.25 percent target ratio in the next 5 years. This estimate includes the premium increase the FDIC has ordered. In order to ensure that the FDIC always has enough cash on hand to close institutions that need to be closed, therefore, additional steps must be taken. We cannot afford to let

the insurance fund decline to levels that will create incentives for the FDIC to wait to close money-losing, insolvent institutions. We know where that leads.

We need comprehensive reform of the deposit insurance system. Last week, I introduced a bill to accomplish that objective. Overhauling deposit insurance, however, is very controversial and will take a lot of time. We also need to take a few quick actions—actions that will help now.

The distinguished chairman of the Banking Committee, Senator RIEGLE, has introduced legislation to eliminate restrictions on the FDIC's ability to raise premiums by the amount it believes is required to protect the fund. I congratulate him for his leadership on this issue, and for his willingness to take this tough step.

The legislation I am proposing today is another step we should take now. As my colleagues may know, banks, thrifts, and credit unions currently have close to $34 billion on deposit at the Federal Reserve. The great bulk of this money represents banking industry money. The Fed does not pay the depository institutions interest on these funds. However, the Fed does earn interest, which it returns to the Treasury.

My bill simply transfers this interest—paid at the Federal funds rate—to the banking, thrift, and credit union insurance accounts. This forgone interest represents a kind of depository institution industry payment to the Federal Government. Transferring the interest to the bank insurance fund and the other relevant insurance funds, instead of the Treasury, means that the funds will receive more than $2 billion in additional income each year. Importantly, this fund transfer can be accomplished without increasing the Federal deficit. While the Fed's payment to Treasury would decrease, FDIC's income would increase, offsetting Treasury's loss.

The benefits of this kind of plan are considerable. It will help ensure that the FDIC has the resources it needs to close insolvent banks promptly. It will help reduce the stress on the bank fund, and help reduce the possibility that the bank insurance fund will need Federal general revenue assistance.

Importantly, it accomplishes these objectives without adding to the risk of further bank failures. Over the last 4 years, the banking industry has added over $62 billion in capital. Banks need to do more to increase their capital, and we need to ensure that they will do more.

We must not forget, though, that industry earnings are down, that loan losses are steadily up, and that bank Federal taxes have doubled in the last 4 years even though earnings last year were over $2 billion less than they were at the beginning of that period. My bill adds to the insurance fund's resources in a way that does not add to the risk of additional failures. It does not take the place of needed premium increases. It does make it more likely that the insurance fund's revenue needs will not hurt bank capital growth, which, after will, is the first line of defense against losses.

The funds my bill transfers are, in a very strong sense, already banking industry funds. It makes sense to put them into the bank insurance fund now. It may be one of the best investments we could ever make.

I offer this suggestion as one the Senate should consider carefully. It is something we can do quickly, without adding to the deficit, which would really help. It is an action that would make a real difference. I urge prompt enactment of this legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 19(b) of the Federal Reserve Act, as amended, shall be amended by adding at the end thereof the following new paragraph:

"(12) EARNINGS ON RESERVES—For each calendar quarter beginning on January 1, 1991, the Board shall assess the Federal Reserve Banks, and the Reserve Banks shall pay to the Board, an amount equal to the imputed earnings on reserves.

Upon receipt of such assessment, the Board shall promptly pay to the Bank Insurance Fund, the Savings Association Insurance Fund and the Credit Union Insurance Fund that portion of the assessment that is attributable to reserves held at Federal Reserve Banks for the quarter by the members of each fund as calculated by the Board. For the purposes of this paragraph, imputed earnings on reserves means the average required reserve balances held with the Federal Reserve Banks pursuant to this section during the applicable calendar quarter by depository institutions that are members of such insurance funds multiplied by the average federal funds rate during that quarter, as determined by the Board.".●

By Mr. ROTH:

S. 3074. A bill to amend title XVIII of the Social Security Act to provide for collection and dissemination of information on Medicare secondary payer situations from entities insuring, underwriting or administering employee group health plans, and to establish a data bank; to the Committee on Finance.

COLLECTION OF INFORMATION ON MEDICARE SECONDARY PAYER SITUATIONS AND DATA BANK

● Mr. ROTH. Mr. President, the Permanent Subcommittee on Investigations [PSI], on which I serve as ranking minority member, recently held hearings on problems and abuses in one part of the Medicare program, the Medicare Secondary Payer or MSP Program. This program involves primarily the working elderly, people who are over 65 but who are still employed and have private health insurance through their employer. The Medicare Secondary Payer, or MSP Program is designed, as its name implies, to ensure that an individual's private insurance pays the primary cost of medical bills, while Medicare pays secondary. Unfortunately, implementation of the MSP Program has been erratic at best.

The MSP program involves a complex legislative scheme that requires several different entities, including health care providers, patients, insurance companies and Medicare administrators to perform certain functions. Unfortunately, performance under the MSP Program has not measured up. Failure to follow the MSP law is costing the taxpayer billions of dollars. Various government sources estimate that losses to the Federal Government as a result of the MSP Program range from $400 million to $1 billion per year. Studies by the General Accounting Office and the inspector general of the Department of Health and Human Services have repeatedly identified the MSP program as gushing with leaks of Federal tax dollars. Today, I am introducing legislation aimed at stemming this flow of Federal tax dollars by requiring accurate reporting of private insurance information.

Why are we confronted with these staggering losses a decade after the first MSP provisions were enacted by Congress? PSI's investigation has uncovered some answers to this question which I hope lead to improvements in implementing the MSP Program. For several years the Federal Government has been relying on the honor system to ensure compliance with MSP. This must stop. PSI's investigation shows, I am afraid, that medical care providers such as hospitals, Medicare contractors which administer Medicare benefits, private insurance companies, the health care financing administration and yes, the Congress, each share some responsibility for the failure of the MSP Program.

While MSP is only a small part of the overall Medicare Program, I find the waste of up to a billion dollars a year in this one program absolutely astounding. In my view, these wasteful and abusive practices belie the claims that the Federal Government needs to raise taxes to make its budgetary ends meet. Until we get our house in order on the waste, fraud, and abuse that cost the taxpayers so dearly, we have no right to ask these same taxpayers to shell out even more in taxes.

It is clear that we need a means to accurately identify primary sources of payment for private insurance so that Medicare pays properly as a secondary payer. This legislation would take us a

long way toward reducing the erroneous payments made by Medicare. Our bill would require any entity insuring, underwriting, or administering a group health plan, as well as certain employers, to notify the Secretary of Health and Human Services of individuals who would be subject to the provisions of the MSP Program. Employers, together with those who administer, underwrite, and insure private group health plans are in the best position to identify employees who have private health coverage through the workplace. Medicare administrators as well as other appropriate State agencies would have access to the information as a check to ensure that the proper private insurance, if applicable, has paid primary to Medicare. Collection and dissemination of accurate insurance information is a vital step toward turning this program around and making it work for the intended beneficiaries rather than lining the pocket of unscrupulous insurance companies who have been ducking their obligations under the law.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3074

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COLLECTION OF INFORMATION ON MEDICARE SECONDARY PAYER SITUATIONS AND ESTABLISHMENT OF DATA BANK.

(a) IN GENERAL.—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended by adding at the end thereof the following new paragraph:

"(6) COLLECTION OF INFORMATION ON SECONDARY PAYER SITUATIONS AND DATA BANK.—

"(A) REQUIRING SUBMISSION OF INFORMATION.—

"(i) FROM GROUP HEALTH PLANS.—The Secretary shall require employers and any entity insuring underwriting or administering a group health plan (as described in paragraph (1)) to notify the Secretary (in such frequency, form and manner as the Secretary may by regulation provide) with respect to individuals entitled to benefits under this title under section 226(a), 226(b), or 226A who are enrolled under such health plans.

"(ii) FROM OTHER INSURERS OR PLANS.—The Secretary shall require entities (including any State or local government) operating, insuring, or administering a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance plan to notify the Secretary (in such frequency, form and manner as the Secretary may by regulation provide) with respect to individuals entitled to benefits under this title under section 226(a), 226(b), or 226A who are enrolled under such health plans.

"(B) PENALTY FOR FAILURE TO PROVIDE INFORMATION.—Any entity described in subparagraph (A) (other than a Federal or other governmental entity) which knew or had reason to know of the requirements of this paragraph with respect to providing notification to the Secretary and which fails to provide timely and accurate notice in accordance with the requirements of this paragraph shall be subject to a civil money penalty of not to exceed $10,000 for each such failure incident. The provision of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) MEDICARE SECONDARY PAYER DATA BANK.—

"(i) IN GENERAL.—The Secretary shall collect and store in a data bank established for purposes of this subsection the information provided to the Secretary by entities as described in this paragraph along with such further information on medicare secondary payer situations as the Secretary deems appropriate no later than 6 months after the date of enactment of this act.

"(ii) DISSEMINATION.—In addition to any other information provided under this title the Secretary shall make the information contained in the data bank established in clause (i) available to fiscal intermediaries and carriers for the purposes of carrying out this subsection.".●

By Mr. GRAHAM:

S. 3075. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

BANK DEPOSIT INSURANCE AUTHORITY

Mr. GRAHAM. Mr. President, there are some eerie similarities to what is happening in the fall of 1990, to that which occurred in the fall of 1988. Almost exactly a year ago, September 8, 1988, in testimony before the House Banking Committee, the then chairman of the Federal Home Loan Bank Board, the agency with responsibility for savings and loan institutions, made this statement:

I believe that in the past year the FSLIC has made significant strides in resolving FSLIC cases and, though subject to the vagaries of future economic conditions, realistic projections today indicate that FSLIC possesses adequate resources in the near term to deal effectively with the immediate problems of troubled institutions.

At that time, Mr. Wall estimated that the total cost of resolving problems would be around $30 billion. Mr. President, as we now know, that $30 billion number was woefully inadequate. We also know from as recently as headlines in today's press that the consequence of the underfunding of the savings and loan insurance fund in the fall of 1988 was to propel Mr. Wall and his colleagues into a series of negotiations which led to transactions such as the "Blue Bonnet" deal, the Southwest Texas plan, and others which are now going to cost the Federal taxpayers in the range of $65 to $70 billion.

What is eerie about recalling those statements in September 1988 is that we are hearing some similar statements, Mr. President, in the fall of 1990 relative to the health of the Federal Deposit Insurance Corporation fund, the fund which supports our commercial banks' deposit insurance.

Mr. President, we are getting statements that essentially say the funds, yes it is in trouble, most of those statements coming from independent observers such as the General Accounting Office and the Congressional Budget Office. But from the regulations we are getting statements that there is no sense of alarm, no need for precipitate action.

Mr. President, I am not reassured by those statements. The history of the savings and loan industry should have taught us a lesson of legislative responsibility. The history of the savings and loan legislation should have taught us the need to move effectively where it is clear that such action is called for. The recent reports by the GAO and the CBO have underscored the vulnerability of the FDIC insurance fund.

Thus, Mr. President, I hope that this Congress, before we adjourn this year, will take a series of actions designed to solidify, to strengthen, to make less vulnerable the FDIC fund so that in the fall of 1992 we will not be bemoaning the fact that twice we had missed the clear clarion call for action.

I believe there are a number of things that need to occur. Some of that legislation is already advanced, such as a proposal to lift the current restrictions on the premiums that can be paid into the FDIC fund. If we are going to make the Federal Deposit Insurance Fund truly an insurance fund and not a disguised subsidy, then the premiums paid in this fund must meet some actuarial standards of adequacy in proportion of the risk assumed.

Second, Mr. President, we ought to be moving forward with a proposal to make the insurance premiums risk based; that is, to relate the degree of risk for individual institutions to the amount of premiums that those institutions pay.

With the current Presiding Officer, other Members and myself have been urging this for some time and have introduced legislation to do so. I hope that that concept will be incorporated in legislation that will pass before we adjourn this year.

A third area is adequate staff for the regulatory agencies. If there was one lesson we have learned through the savings and loan industry is that there is a difference between deregulation and desupervision. Deregulation speaks to letting the marketplace function more effectively. But we know that as long as there are important trust responsibilities to the safety and soundness of our basic financial system that there will be the necessity for effective supervision. And we need to be assured, Mr. President, that there will be that effective personnel,

both in number and in competence, to provide us with effective oversight.

That effective supervision will then allow us to get data, information, somewhat like the thermometer of our financial institutions, so that we in the Congress, the executive branch, and the American people will have reliable data upon which to assess the health of the insurance fund and the industry.

This afternoon, Mr. President, I am introducing another concept which I think should be part of this emergency process and that is to carry out a recommendation that has been made by the current chairman of FDIC, Mr. William Seidman. Mr. Seidman, on July 31 of this year, speaking before the Senate Banking Committee, said that he believes "that as a basic principle the insurer should decide which institutions it insures and that that is the ultimate protection that ought to be afforded to the taxpayer. So we have that now with the savings and loan. We don't have that with the banks." "As a matter of principle, the insurer should determine what institutions qualify for insurance.* * *"

Well, what Mr. Seidman was alluding to is the anomaly that currently exists, and that is that the Federal Deposit Insurance Corporation is required to provide insurance coverage to federally chartered banks or those that are members of the Federal Reserve System. As a result of action taken in 1989, FDIC is no longer obligated to give insurance to thrifts; that is, a judgment can be made to the effect that that particular institution given its standards of conduct does not warrent the extension of Federal deposit insurance. The FDIC has similar authority to withhold insurance coverage from State chartered nonmember financial institutions.

The legislation which I am going to file would eliminate this anomaly and, as Chairman Seidman has requested, would give to FDIC the authority to deny insurance on an individual institution basis where it is determined that that institution represents too great a risk to the insurance fund.

Mr. President, I have alluded to some of the lessons that we have learned in the saving and loan debacle. Clearly, a core lesson is the fact that we cannot allow the deposit insurance fund to remove from the management of institutions their sense of personal responsibility and financial accountability for their actions. The way the insurance fund has operated in the past has been characterized as privatizing profits and socializing losses; that is, the institution, if things went well, would reap the benefit of the profit; if things went badly, that was the taxpayers' responsibility. That is an unacceptable allocation of risk and reward.

Mr. President, the legislation I will file today will fill one piece of that anomaly by providing to the Federal Deposit Insurance Fund the capacity to deny coverage where it feels that a federally chartered institution does not warrant that degree of Federal assumption of financial responsibility.

Mr. President, the Sunday, July 15, 1990, "Face the Nation" television program featured the Chairman of the Federal Deposit Insurance Corporation [FDIC], Mr. William Seidman, who commented that he felt the insurance fund was adequate to handle a mild recession, but that if economic conditions should deteriorate beyond that, that he had some serious concerns. His statements were quoted in the Washington Post on Monday, July 16. Mr. Seidman stated that the insurance fund that protects the deposits of U.S. banks is "under considerable stress" and "would be in trouble" were the Nation to suffer a serious recession. The article went on to quote Mr. Seidman as saying "we can handle anything we can foresee right now," Mr. Seidman said, "But if things come along, major failures that we are not able to foresee at this time, that would be another story. The system is under stress."

Mr. President, as I read that article, I had a sense of recall of similar statements being made back in 1988 relative to the Federal Savings and Loan Insurance Coporation [FSLIC].

At that time Chairman Wall of the Federal Home Loan Bank Board said on May 26, 1988, to the Senate Banking Committee:

> The board projects the FSLIC possesses adequate resources in the near term to deal effectively with problem institutions in the thrift industry. This projection depends upon other segments of the thrift industry remaining stable and assumes no significant increase in interest rates or dramatic downturn in other sectors of the economy.

At that time Mr. Wall was projecting a cost to the fund of somewhere around $22.7 billion.

Meanwhile, Under Secretary George Gould of the Treasury Department in a question and answer period with me on August 2, 1988, said when I asked him "assuming the problem is a $30 billion problem. What do you believe Congress should do between now and our adjournment in October? Mr. Gould replied: "Well, in my opinion, Senator, if you believe that is the size of the problem, and as I do, that the bank board is moving as expeditiously as it is organized to do, then I think it is not necessary to do anything between now and November." He continued, "if you proceed into next year at the rate of two resolutions a week you're going to learn something about the costs. Then if you want to review the situation again next year, I would suggest and really ask very strongly that you do it in the context of looking broadly at the whole public policy issue of the role of deposit insurance."

In Mr. Wall's September 8, 1988, testimony before the House Banking Committee he said again, "I believe that in the past year the FSLIC has made significant strides in resolving FSLIC cases and, though subject to the vagaries of future economic conditions, realistic projections today indicate that FSLIC possesses adequate resources in the near term to deal effectively with the immediate problems of troubled institutions." The problem was then estimated to be around the $30 billion level.

I was troubled with that pattern of representations in 1988 by Mr. Wall and Mr. Gould that showed the situation to be so distant from the reality. Today, I am troubled by the similar statements we are hearing from Chairman Greenspan and Treasury Secretary Brady.

During a questions and answer period with me during a Senate Banking Committee hearing on July 18, 1990, I asked Chairman Greenspan if he had any recommendations he would make to Congress regarding the Federal deposit insurance fund. Chairman Greenspan said:

> I would assume if there were any recommendations, they will evolve in the context of the firrea-mandated study which the Treasury is involved with and which we at the Fed are acting in concert with them.

I also asked Chairman Greenspan:

> It was almost exactly 23 months ago that the then Vice President of the United States, made a statement that his economic assessment of the future was such that he felt we could achieve our Nation's economic and fiscal goals solely within spending reduction strategies. That position was reasserted in January 1990 in the State of the Union Address. During the week of July 18 we had a report from the President's budget advisers that if we were to follow that strategy, that very serious negative occurrences would be the result. What do you think happened in the 23 months since August 1988, and the 7 months since January 1990, that have caused the assessments of some of the most knowledgeable and best informed people in the Federal Government to now be so widely out of touch with what current economic circumstances are?

Chairman Greenspan replied:

> Well, there are a lot of technical differences that have emerged with respect to estimating the budget deficit and specifically, receipts. The effects of the Tax Reform Act of 1986 were not clearly evident until fairly recently * * * that was certainly one element. There were clearly other elements involved. I mean, there were estimates of the rate of economic activity in nominal, taxable income terms which are higher than has turned out to be the case. Their interest rate assumptions turned out to be lower than turned out to be the case, which is one additional relevant issue. Finally, the way in which the budget is forecast by the administration is to assume that the requests of the President are fully implemented by the Congress. And depending on what those requests are, you can get a very significant,

different budget forecast than from what we've called baseline or used to call current services. I think that the numbers we're looking at today are more baseline current services, whereas, those that refer to the two cases in which you were referring were, I believe, administration forecasts with full policy implementation.

On July 25, 1990, I asked Treasury Secretary Brady, when he came before the Senate Banking Committee, "Do you share Chairman Seidman's appraisal of the Federal deposit insurance fund being under stress?" Secretary Brady responded:

I do not know what assumptions went into the calculation of "severe recession." You certainly could have a severe recession that would threaten a lot of things, and we cannot base our estimates of how we are going to conduct business on a severe recession, although they ought to be taken into account. If you did, how about a severe-severe recession, which would produce probably the requirement for deposit insurance charges to the banks that they put forward to pay and place this country at an even greater comparative disadvantage with international competitors like Japan and Germany. * * * "severe recession" is going to mean trouble in a lot of areas. The point is to stay out of a severe recession, which I think we will do.

Then I asked Secretary Brady if there were any actions he would recommend that Congress should initiate relative to the Federal deposit insurance fund. Secretary Brady said:

Not at this time, although we are studying the matter. I have asked Bill Seidman to give us any conclusions he might have so we can look at them.

I also asked Secretary Brady about the economic assumptions made by the President in his State of the Union Address in January 1990 indicating my concern that if circumstances could change so dramatically in just this 6-month period, what does that say about the State of the American economy? And what are the reasons that he thought accounted for this dramatic shift between January 1990 and the 25th of July? Secretary Brady said:

There are a number of things that have changed since the President put forth his budget. First of all, we have had a slowdown in the economy which has contributed substantially to the increase in the deficit. Second, there has been more spending than we thought there should be. That is a question of whether that spending should continue at the rate that is now going on. The obvious conclusion is that it cannot continue.

As one who has functioned in both the legislative and executive branches of Government, I know how important it is for one who represents the executive branches' responsibilities to the legislative branch to accurately assess the condition and needs of that agency and assist the legislative branch in carrying out its independent legislative responsibilities. Executives should be aware of the consequences of their actions and therefore not discourage any sense of urgency or provide unfounded optimism as we get on with the job of working out the problems. We do not want to create an atmosphere of passivity while one of the most serious crises of the financial industry continues or another one starts to unfold.

As a fundamental goal to trying to avoid a repetition of the savings and loan crisis with the banking insurance fund, I will be introducing a bill to give the FDIC the authority to withhold Federal deposit insurance to federally chartered banks or those that are Federal Reserve members. This mirrors the authority we gave the FDIC for federally chartered thrifts in FIRREA. The FDIC already has the authority to withhold Federal deposit insurance from State chartered nonmember financial institutions. Currently the FDIC gives automatic insurance coverage to federally chartered banks or those that are members of the Federal Reserve System.

Chairman Seidman of the FDIC is in support of my bill. During the Banking Committee hearing July 31, 1990, he said:

Well I think that as a basic principle the insurer should decide which institutions it insures and that that is the ultimate protection that ought to be afforded the taxpayer. So we have that now with the S&L's. We don't have that with the banks. As a matter of principle, the insurer should decide what institutions qualify for insurance.* * *

My bill would give Chairman Seidman that authority. My bill is not inconsistent with our review of the deposit insurance reform study. It is obvious that this bill should be introduced and moved. I encourage all my colleagues to cosponsor this bill.

By Mr. PRYOR (for himself, Mr. HEINZ, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. WARNER, Mr. HOLLINGS, Mr. CONRAD, Mr. GLENN, Mr. RIEGLE, Mr. BRADLEY, Mr. COCHRAN, Mr. BURDICK, and Mr. LEVIN):

S. 3076. A bill to provide for permanent extensions of expiring health related waiver of liability provisions; to the Committee on Finance.

EXTENSION OF EXPIRING HEALTH RELEATED WAIVER OF LIABILITY PROVISIONS

● Mr. PRYOR. Mr. President, I am introducing a bill today that would make permanent the Medicare waiver of liability for home health agencies, hospices and skilled nursing facilities [SNF's]. I am pleased to be joined by Senators HEINZ, MITCHELL, ROCKEFELLER, WARNER, HOLLINGS, CONRAD, GLENN, RIEGLE, BRADLEY, COCHRAN, BURDICK, and LEVIN.

In essence, the waiver of liability acts as a form of insurance for health care providers in good standing who accept Medicare patients, but later find that these patients are ineligible or the services are not covered. In 1972, the Health Care Financing Administration [HCFA] created this presumptive status for providers whereby they were presumed to have acted in good faith if they demonstrated reasonable knowledge of coverage standards in their submission of claims.

The waiver of liability does not give providers a blank check. In order for them to be compensated under the waiver of liability presumption, their overall denial rate of claims must be less than 2.5 percent of Medicare claims for home health agencies and hospices, and 5 percent for SNF's. Any provider that exceeds these limits is not reimbursed under the waiver.

Congress responded to HCFA's attempt to eliminate the waiver in 1986 by including a 1-year extension in COBRA. Subsequent to COBRA, the Medicare Catastrophic Care Act extended it until November 1, 1990; this provision was not repealed. The House reconciliation bill includes an extension of the waiver for SNF's, hospices, and home health agencies until December 31, 1995. There was no cost associated with this provision.

Because of the inherent uncertainty in the various fiscal intermediaries' interpretations of constantly changing guidelines, directives and regulations, the protection that the waiver of liability offers is crucial to home health agencies, hospices and SNF's. Without it, some providers might well be hesitant to cover Medicare patients—an outcome we all would want to avoid. Because of the importance of the waiver to providers and beneficiaries, and because it has been in place for nearly 20 years, it makes sense to make it permanent. I urge my colleagues to join me in cosponsoring this legislation.●

By Mr. WIRTH:

S. 3078. A bill to protect the wilderness qualities of certain lands in the State of Colorado pending enactment of legislation designating those lands as components of the National Wilderness Preservation System or releasing those lands for other purposes; to the Committee on Energy and Natural Resources.

INTERIM COLORADO WILDERNESS PROTECTION ACT

● Mr. WIRTH. Mr. President, over the last few years the Colorado delegation has discussed repeatedly the need for a Colorado wilderness bill. Unfortunately, despite agreement on the need to complete this task, progress on a Colorado wilderness bill has been stalled by the debate over protection on streamflows in wilderness areas.

While the debate over wilderness water rights has dragged on, many proposed wilderness areas are being threatened by logging, off-road vehicle use, and commercial development. Unless action is taken soon, some of Colorado's premier potential wilderness areas will be irreversibly damaged, and we will have lost the oppor-

tunity to preserve these areas for future generations.

Therefore, today I am introducing legislation to provide interim protection for all of the areas that have been proposed for wilderness by members of our delegation. This legislation has one simple goal: To protect these areas' wilderness values until the congressional delegation can devise a compromise solution to the water rights controversy. Then we can move on to making final decisions on which lands should be permanently designated as wilderness and which lands should be released for other purposes.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3078

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Interim Colorado Wilderness Protection Act of 1990."

TITLE I—INTERIM PROTECTION

SEC. 101. FINDINGS.—The Congress finds and declares that—

(1) There is broad support among the people of Colorado and the nation for legislation to protect the natural values of wilderness candidate lands in the State of Colorado;

(2) Wilderness candidate lands in Colorado provide valuable habitat for a wide variety of fish and wildlife species;

(3) Wilderness candidate lands are used by families from across the country for hiking, camping, hunting, fishing, skiing, and other recreational activities, and are also used for grazing domestic livestock, all of which contribute to the state's economy;

(4) However, many of these wilderness candidate lands are threatened by activities that are incompatible with protection of their wilderness values and pristine environmental quality and which could irrevocably impair those areas' suitability for wilderness designation; and

(5) It is essential to preserve and protect the wilderness values of these lands until the Congress enacts legislation that either designates these lands as components of the National Wilderness Preservation System, or releases these lands for other purposes.

SEC. 102. (a) INTERIM PROTECTION.—For a period of five years, beginning on the date of the enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior shall manage those federal lands in the State of Colorado that were proposed to be designated as wilderness or wilderness study areas by the provisions of S. 1343 (The Colorado Wilderness Act of 1989) as introduced in the United States Senate on July 18, 1989; S.2001 (The Colorado Heritage Preservation Act) as introduced in the United States Senate on January 23, 1990; and the legislative proposal identified as "Discussion Draft" dated 2-8-90 and carrying Office of the Legislative Council, U.S. House of Representatives identification number CAMPC0001 that accompanied a letter dated February 10, 1990, from the Honorable Ben Nighthorse Campbell, so as to protect their wilderness qualities and to preserve unimpaired their suitability for designation as wilderness.

(b) The lands encompassed by this Act are closed to all forms of timber removal.

(c) Subject to valid existing rights, the minerals in lands designated by this Act are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(d) The appropriate Secretary shall limit motorized access to the lands encompassed by this Act to those purposes and uses that would otherwise be permitted if these lands were designated as components of the National Wilderness Preservation System, subject to the provisions of paragraph (e).

(e) The grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are applicable to grazing on federal lands generally. The use of motorized vehicles or motorized equipment for the management of livestock, where established prior to the enactment of this act, shall not be subject to the provisions of paragraph (d).

(f) This Act shall not be construed to interfere with the terms and conditions of special use permits that have been issued by the Secretary of Agriculture for winter recreation sites. In those cases where lands encompassed by this Act are also subject to approved special use permits for winter recreation sites at the Berthoud Pass Ski Area and the Winter Park Ski Area in the State of Colorado, the terms and conditions of the special use permits shall control.

TITLE II—WATER RIGHTS

SEC. 201. This Act shall not be construed to effect an express or implied reservation of water.

TITLE III—ADMINISTRATIVE PROVISIONS

SEC. 301. As soon as practicable after this Act takes effect, the Secretary of Agriculture and the Secretary of the Interior, as appropriate, shall file maps and legal descriptions of each candidate wilderness or wilderness study area identified by this Act with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and such maps and legal descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.●

By Mr. McCAIN:

S. 3079. A bill to authorize the expansion of the Saguaro National Monument; to the Committee on Energy and Natural Resources.

EXPANSION OF SAGUARO NATIONAL MONUMENT

● Mr. McCAIN. Mr. President, today I am introducing legislation which will authorize the expansion of the Saguaro National Monument in Tucson, AZ.

The Saguaro National Monument was established in 1933 to preserve and protect "the exceptional growth thereon of various species of cactic including the majestic saguaro cactus." The monument is a favorite visiting spot for many Arizonans and visitors to our State.

The legislation I am introducing today will authorize the addition of 3,540 acres to the Rincon Unit of the monument an area of 63,000 acres. The areas designated for inclusion contain outstanding features, which deserve protection and would be an excellent addition to the monument. Located immediately adjacent to the present monument lands, the proposed area is an exceptional example of the Saguaro Cactus-Palo Verde uplands Sonoran desert habitat. The land's healthy multiaged saguaro stands add ecological diversity to the present area, and is prime habitat for desert tortoise, gila monster, javelina, and numerous other species of reptiles, mammals, and birds typical of the ecologically rich Sonoran desert area. Additionally, the area contains important archaelogical and cultural sites.

The bill authorizes the Secretary of the Interior to acquire the land and all interest in it through donation, exchange or purchase with donated or appropriated funds. The acquisition will only go forward with the willing participation of the present landowners.

Legislation to effect the expansion of the monument has received wide support including that of the Pima County Board of Supervisors, the city of Tucson, the Sierra Club, the Pima Trails Association, the Conservation Foundation, the Wilderness Society, and the National Parks, and Conservation Association. I would like to ask unanimous consent that letters from the Pima County Board of Supervisors and the city of Tucson be inserted in the RECORD. I would also like to thank and congratulate the Tucson-based Saguaro National Monument boundary review working group which has labored so diligently on the expansion plan, particularly Luther Propst, William Lienesch, and Steven Whitney.

Arizona has been blessed with a bountiful natural heritage. This legislation will play an important role in ensuring our heritage is protected and preserved for the benefit of this and future generations of Arizonans. I look forward to a hearing on this legislation at the earliest possible time so that the Senate can examine it in detail.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CITY OF TUCSON,
OFFICE OF THE MAYOR,
Tucson, AZ, July 16, 1990.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR JOHN: Thank you for asking for the City of Tucson's comments on the proposed expansion of the Rincon Mountain unit of Saguaro National Monument. Our comments are as follows:

The proposal to expand the boundaries of the Rincon Mountain Unit of Saguaro National Monument, as delineated in the May 15 memo from the Boundary Review Working Group, is consistent with City plans and policies promoting open space and resource preservation. This coalition, comprised of representatives from National Parks and Conservation Association, The Wilderness Society, Sierra Club, The Conservation Foundation, Pima Trails Association and Doug Shakel, has proposed an "Enhanced Monument Boundary" and plans to pursue Congressional authorization to include this new addition.

The City's comprehensive General Plan, adopted in 1979, encourages the preservation of significant natural areas and promotes the establishment of federal managed wildlife preserves. Mayor and Council is currently considering an update to the Recreation Element of the General Plan which will include additional goals and policies promoting the preservation of natural resources and the expansion of the public preserves. Specifically, Open Space Policies under consideration in the Recreation Element which appear to have Mayor and Council support include the following:

II.A.: Encourage cooperation between local governments, state and federal agencies, private organizations and citizens to acquire, manage, conserve and protect natural open space resources.

II.C.: Generate public interest and support for open space preservation by emphasizing environmental, recreational and aesthetic values, including wildlife habitat, water conservation and flood control, visual relief and opportunity for contact with natural elements.

Mayor and Council have also recently demonstrated concern and appreciation for preservation of the resources by their adoption of the Environmental Resource Zone Ordinance on July 2, 1990. The purpose of this ordinance is to protect the remaining riparian areas along selected watercourses at the edges of the City which provide habitat for wildlife and buffer the preserves.

The coalition has drafted a proposal which is based on identification and scientific analysis of the botanical/ecological and archaeological attributes of the land area adjacent to the Monument. Consultation with pertinent property owners provided information regarding willingness to support the expansion and bring these resources under the protection of the National Park Service. This appears to be a commendable effort matching a resource inventory with acquisition potential.

Given the City's position of support for open space and natural resource preservation and the apparent soundness of the coalition's methodology, the City's support for the expansion of the Rincon Mountain Unit of Saguaro National Monument would be consistent with adopted plans.

Again, thank you for requesting comments from us. If you have any questions regarding the above information, please feel free to contact our office. Thank you.

Sincerely,

THOMAS J. VOLGY,
Mayor.

PIMA COUNTY BOARD OF SUPERVISORS,
Tucson, AZ, August 1, 1990.

Hon. JOHN MCCAIN,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR JOHN: Please find enclosed a copy of the Pima County Board of Supervisors Resolution # 1990-118 endorsing the expansion of the Saguaro National Monument.

The Pima County Board of Supervisors wholeheartedly supports the expansion of the boundaries of the Saguaro National Monument to include this beautiful area which contains the richest stand of Saguaros I have ever seen in Arizona and John, you understand, Republicans will not lie. We would certainly love to have your support to accomplish the extra addition to the Saguaro National Monument.

In spite of what you read in the newspaper, our Board has been very active in obtaining pristine land and creeks which are so scarce in Arizona. We have added in the past week 25,820 total acres in the Cienega Creek area. Only 880 acres were purchased by the County, but BLM and Pima County have worked hand in hand in taking 75,000 acres of the Cienega and Empire Ranches out of the hands of developers and back into a natural preserve or conservation area, with a trail head and trails area going all the way to Sonoita. This purchase preserves riparian environment of the whole area and stopped the sand and gravel operation.

John, I hope you will give careful consideration to supporting the proposed expansion of the Saguaro National Monument efforts. Thank you for all your efforts on behalf of Southern Arizona.

Best regards,

REG T. MORRISON,
Chairman.

RESOLUTION 1990-118

A RESOLUTION OF PIMA COUNTY BOARD OF SUPERVISORS ENDORSING A PROPOSAL TO EXPAND THE BOUNDARIES OF THE SAGUARO NATIONAL MONUMENT

Whereas, a coalition of local and national environmental organizations has recommended the enlargement of the boundaries of the eastern unit of the Saguaro National Monument; and

Whereas, the Saguaro/Palo Verde habitat of the foothills of the Rincon Mountains bordering the southern side of the Monument is an exceptionally rich area of Sonoran Desert uplands; and

Whereas, the stand of saguaros inhabiting these foothills comprises a particularly excellent, healthy, and multi-aged stand that is not only one of the finest in the region, but rivals or even exceeds the quality of stands presently featured within the Monument; and

Whereas, on June 5, 1990, the recommendation of the Sierra Club, the Pima Trails Association, the Conservation Foundation, the Wilderness Society, the National Parks and Conservation Association, and local environmental activists to expand the Saguaro National Monument was transmitted to Arizona's Congressional delegation; and

Whereas, a number of Arizona's Congressional delegates have sought the views of the National Park Service concerning the propriety and wisdom of expanding the eastern unit of the Saguaro National Monument; and now, therefore, be it

Resolved, That the Board of Supervisors of Pima County, State of Arizona, hereby recommends the inclusion of the lands within the Enhanced Monument Boundary into the eastern unit of the Saguaro National Monument.

Be it further resolved, That the Clerk of the Board of Supervisors of Pima County be directed to immediately transmit this Resolution to the Director of the National Park Service and to Arizona's Congressional delegation.

Passed and adopted this 17th day of July, 1990, by the Pima County Board of Supervisors.●

By Mr. HELMS:

S. 3080. A bill to provide to the Federal Government and States the opportunity to acquire old military facilities for use as prisons to ensure that prisoners are not unnecessarily released early; to the Committee on Armed Services.

ACT TO ELIMINATE REVOLVING-DOOR PRISON TERMS FOR DRUG DEALERS AND OTHER CONVICTED CRIMINALS

Mr. HELMS. Mr. President, I am introducing today legislation to help in dealing with a crisis in the prison systems of America.

At both the Federal and State levels, prisons are bursting at the seams—Federal prisons are operating at 163 percent of capacity and State prisons are as high as 127 percent of capacity.

Because of prison overcrowding, and court orders, many States are releasing inmates who have served only a fraction of their sentences. This is like giving convicted criminals a "Get out of Jail Free Card" to go back to robbing, raping, and killing innocent Americans. The bottom line is that prison overcrowding is putting criminals back on the street, thereby increasing crime.

Mr. President, there is a desperate need to increase prison capacity. Ways must be found to deal with the prison crisis. It is imperative that there be a return to a policy of protecting society and innocent Americans. In order to protect society, we desperately need to increase prison capacity both at the Federal and State levels.

My bill will help the Federal Government and the States increase prison capacity by giving them the first shot at some of the bases that are scheduled to be closed under the Base Closure Act.

My bill also will make available to the States 20 pieces of surplus Federal property for use as prisons. Furthermore, the bill authorizes the use of tent camps at these former military bases and other prison facilities, on a temporary basis. If tents are good enough for our soldiers, then surely they are adequate for criminals. I think it is time to stop pampering criminals.

Lastly, Mr. President, the bill requires the Director of the Bureau of Prisons to cut costs by eliminating luxuries such as color television, pool tables, and cable television.

Using former military bases, surplus Federal property, and tent camps provides three cost-efficient ways to increase prison capacity and keep criminals in jail—where they belong—instead of back out on the streets robbing and killing people.

Mr. President, if Senators doubt that there is a crisis, they need only to

look at the facts relating to prisons and the cost of crime to society. First, let's look at the status of prison overcrowding. Just a few weeks ago, the Department of Justice reported that the Federal prison population reached 52,984, whereas the capacity of Federal prisons is only 32,494. As I stated earlier, this is 163 percent of their capacity. The State prison population hit 650,703 last June, which is 126 percent of their capacity.

Furthermore, the prison overcrowding problem will only get worse as we crack down on drug dealers and drug users. The Bureau of Prisons projects the Federal prison population will exceed 95,000 by 1995. This past year Congress recognized the need for more prisons and we appropriated $1.5 billion for prison construction. This will help increase capacity by 36,000 beds. But the Federal system—under the most optimistic projections—will still be 130 percent over capacity.

Mr. President, the States also are having a difficult time keeping up with the explosion in the number of prisoners they must incarcerate. The State prison population has increased by over 113 percent since 1980. As a result, in 41 States, the entire prison system or a portion thereof is under court order to reduce overcrowding.

One way States deal with overcrowding is to release prisoners before they have served their full sentence. Nationwide, the average murderer is sentenced to 17 years in jail, but he is out within 5 years and 9 months. In my home State of North Carolina, the typical criminal serves only 29 percent of a sentence for a serious crime and 14 percent for a misdemeanor.

The North Carolina Parole Commission paroled 19,000 prisoners in 1989, which is a 250-percent increase over 1985. Just this past January, the State paroled and released 17 murderers, 23 armed robbers, 23 child molesters, 126 burglars, and 128 drug offenders. And the story is the same in dozens of other States across the country. This is outrageous, we are putting living time bombs back out on the street.

Mr. President, what is the effect of releasing prisoners early? In addition to contradicting justice, it also violates the principle that prison is a deterrent to future crime. The National Institute of Justice found that 62.5 percent of released prisoners were rearrested within 3 years. The thought of going back to prison does not stop 62.5 percent of criminals from committing more crimes once they get out, because they assume they will gain early release again.

A North Carolina official, Secretary Joe Dean, recently gave a good example of how jail time appears to have lost its deterrent effect. He stated that prisoners now refuse even to consider alternatives to jail time, such as electronic monitoring or supervised probation, because they know that if they go to prison, they will be on the street again in a few months.

The Secretary of Corrections in North Carolina, Aaron Johnson explained that because of the cap on prison population, every time a new prisoner comes in the front door, they must let another prisoner out the back door. As Secretary Johnson says "The public demands more * * * than revolving door justice."

Mr. President, this brings us to the second aspect of the prison crisis: the cost to society. The National Institute of Justice and the Rand Corp., conducted a study of crimes committed by prisoners in three States. The study found that the average criminal committed between 187 and 287 crimes per year at an annual cost of $430,000.

This figure dwarfs the average cost of $50,000 to build one new prison bed space. Thus, according to this study, keeping a criminal in jail saves society $380,000 per year. Even if you cut the Rand study's cost estimate in half, $215,000 per year in cost to society is still four times the cost of building one prison bed space.

One final point: A Bureau of Justice statistics study found that 28 percent of crimes committed would have been avoided if prisoners had served the full length of their sentences. That adds up to hundreds of lives and millions of dollars that could have been saved by keeping criminals in jail.

Mr. President, the bill I am introducing will help increase prison capacity at the Federal and State levels in several ways. First, it gives the Attorney General and the States priority to obtain some of the military bases that are being closed. Under current law, the Attorney General must wait in line with all other Federal agencies. The States are even lower on the totem pole.

In 1988, Congress set up a Commission on Alternative Utilization of Military Facilities to determine which bases could be converted into prisons. However, the Commission cannot ensure that the Attorney General or the States will get the first shot at any of the former bases. The Attorney General could still be preempted by other agencies, including the Defense Department. And under current law, the States have no input into the Commission process. My bill will ensure that the States have a fair chance to gain access to former military bases.

Mr. President, lest anyone be concerned that this amendment would force any State to put a prison on the old bases being closed in that State, the bill merely gives the states the first shot at the former bases if the State determines that it wants to put a prison in that facility. Furthermore, before the base is transferred to a State, the Secretary of Defense must review and consider any alternative plan that the local government may have for the property. This ensures the local governments will have input into the process.

Second, the bill requires the General Services Administration [GSA] to compile a list of 20 pieces of surplus Federal property that could be used by the States as prisons. This will be particulary useful to those States where there are no military bases being closed.

It is just common sense to convert at least some former military bases, and some surplus Federal property into prisons. It will cost a lot less than building new prisons. The cost could be as low as $4,000 per bed compared to the per bed cost of $40,000 to $100,000 for new prisons. The Federal Bureau of Prisons states in its 1988 report that using former military bases is the most cost efficient method to obtain more space to house minimum security offenders.

President Bush endorsed the idea of using former military bases as prisons in his first drug strategy proposal.

Mr. President, the third aspect of the bill authorizes the Federal Bureau of Prisons and the States to set up tent camps, on a temporary basis, at these former military bases or any other prison facility. It seems logical that we should do everything possible to avoid the early release of prisoners because of prison overcrowding.

If tent camps are needed to keep prisoners locked up, thereby protecting society, we should do so.

Mr. President, we can no longer tolerate a prison system that gives prisoners "Get out of Jail Free" cards merely because of prison overcrowding. The facts show that releasing prisoners early is more costly to society than building more prison space.

It is abundantly clear that we must expand prison capacity. The use of former military bases, Federal surplus property, and tent housing is a cost-efficient method of dealing with the prison crisis and thereby protecting society to a far greater extent than is now the case.

By Mr. ROCKEFELLER (for himself, Mr. HATCH, Mr. KENNEDY, Mr. RIEGLE, Mr. DODD, Mr. BRADLEY, Mr. JEFFORDS, Ms. MIKULSKI, Mr. SIMON, Mr. ADAMS, and Mr. PELL):

S. 3081. An act to amend title XIX of the Social Security Act to provide better health protection for mothers and children, and for other purposes; to the Committee on Finance.

BETTER HEALTH PROTECTION FOR MOTHERS AND CHILDREN ACT

Mr. ROCKEFELLER. Mr. President, today I am introducing a bill to respond to the urgent health care needs of millions of America's pregnant

women and children. I am especially proud to be joined by Senator HATCH, Senator KENNEDY, and Senator RIEGLE as the other prime sponsors of this legislation, and to have the active support and cosponsorship of Senators DODD, BRADLEY, JEFFORDS, MIKULSKI, SIMON, ADAMS, and PELL.

Our bill, the Better Health Protection for Mothers and Children Act of 1990, will both expand and improve health care coverage for close to 1½ million low-income children and adolescents. We are also proposing other crucial steps to sustain health care protection for the more than 12 million children currently eligible for Medicaid and to promote accessible, cost-efficient, and effective health care for low-income pregnant women.

Mr. President, we are making a loud and strong plea with this legislation. We believe that immediate action is absolutely essential to secure the future of our youngest generation. America has a moral and economic imperative to ensure that its children are born healthy and grow up with access to basic, decent medical care.

I fully recognize the skepticism that pervades the Halls of Congress and the administration when it comes to initiatives like ours that call for additional Federal spending. But we must realize that the cost of inaction is far greater. For every dollar we spend on prenatal care, three or more times that is saved by avoiding the trauma and financial costs of premature births and other debilitating and lifelong consequences.

My optimism about the potential for passing this bill is based on the nature and level of support for our proposal. In letter after letter of support from major business, health care, and childrens' organizations, a common message is abundantly loud and clear. The consensus is that today—right now—we must act to guarantee health care coverage for every pregnant woman and child in America. I will submit all of these statements for the RECORD to demonstrate this support. Our allies include the National Association of Manufacturers, the Chamber of Commerce, Children's Defense Fund, the American Academy of Pediatrics, and the American Hospital Association.

It is time for America to be a nation that cares for its children. We once had the third-lowest infant mortality rate in the world. We now rank 22d, behind countries such as Singapore and Spain. Every week in America, close to 5,000 babies are born with low birthweights. These are the babies likely to face lives of serious illness, developmental disorders, and lifelong handicapping conditions. The point is that we can prevent most of these tragedies, and the financial costs that follow, through prenatal care and proper medical care for children once they are born.

When it comes to health care spending, America puts children at the end of the line. More than 15 percent of America's young—that is, over 12 million children under the age of 18—have no health insurance, either public or private. In my State of West Virginia, close to 100,000 children are uninsured. My State is doing everything it can to respond to this crisis, but we simply don't have the resources to fill in all the gaps. This is a national crisis. Medicaid covers less than half of the Nation's poor. Eligibility for school aged children remains tied to AFDC eligibility, which is set by the States and is as low as 16 percent of the Federal poverty level. That is a disgrace that must end.

We know that in addition to the pain and suffering that lack of health care causes, the cost to the country immediately and in the long term of not providing these services is higher than the cost of preventing them. We know that for every $1 spent on quality prenatal care, more than $3 can be saved by reducing the number of low birthweight babies. We know that children who receive comprehensive primary and preventative health care under Medicaid have annual health costs 7 percent less than children who do not. They are also hospitalized less frequently. In the last 12 years, the United States spent about $2.5 billion in first-year costs alone to care for 330,000 low birthweight babies—that same amount of money could have paid for 10 times as many women to get prenatal care or 12 times as many children to get comprehensive care.

In addition to not covering millions of poor people, Medicaid fails people by not adequately reimbursing providers. Payments to hospitals and doctors are so woefully inadequate that access to decent care is compromised. The result is that even when eligibility to Medicaid is assured, access to the doctor is not. Few available providers means that patients must wait weeks before getting an appointment, often delaying receipt of prenatal care until the second or third trimester, if at all. They must often travel long distances to clinics and wait for hours in crowded conditions to see a doctor or nurse. High-risk patients must go to several locations in order to receive the complex array of services they needed.

We must fill in the gaps and build a decent health care system for poor pregnant women and children. That is the purpose of our bill, the Better Health Protection for Mothers and Children Act. We address cost, quality, and access. Our bill would guarantee Medicaid coverage for all children in families with income below 100 percent of the poverty level. For example, over 3,000 of West Virginia's uninsured children would gain immediate health care coverage and protection.

Our bill would extend coverage to 1.4 million children in the first year. We also ensure enrollment in Medicaid for at least 1 year so that children can get continuous care and are not subject to arbitrary cutoffs triggered by the rules of other assistance programs.

Through our bill, Medicaid payments to doctors and hospitals would be, over time, shifted to a consistent, national standard, first for services to pregnant women, then for children. This will make sure that pregnant women and children are receiving first tier health care and reduce cost shifting.

Costs and quality would be addressed by initiating special demonstration projects to promote cost-effective care. And the Agency for Health Care Policy and Research is directed to develop clinical practice gudelines for services for high-risk pregnant women.

Because of the severity of the health care emergency facing mothers and children, these reforms would be financed by the Federal Government initially, with the States gradually contributing their share of the costs by 1997. To offset any deficit impact, the Federal excise tax on cigarettes would be raised from 16 to 32 cents.

There are sound health policy reasons for raising the cigarette tax. Higher excise taxes on cigarettes have been shown to be an effective deterrent in the purchase of tobacco products, particularly on children and youth. Virtually all people who smoke today started doing so before the age of 20. Today 6 million teenagers and another 100,000 children under the age of 13 smoke.

Also, as Secretary Sullivan recently testified, the "danger of smoking is real—smoking doubles the risk that a baby will die—and it is pervasive—there are around 900,000 infants born each year to smoking mothers * * * one-quarter of all low birthweight babies are attributable to smoking during pregnancy. * * *"

We know the tragic and costly effects of the gaps in today's health care system on millions of America's pregnant women and children. We also know how to prevent many of these problems and give a decent start and real hope to our children through proper prenatal and health care. Again, I say let us do what is right and what is vital to the Nation's future.

The status quo is unacceptable. It is not acceptable to Senators HATCH and KENNEDY and the other Senators who are cosponsoring this legislation—nor is it to the many distinguished organizations supporting the bill. The American people want their President and elected officials to provide leadership that responds to our country's health care crisis. I believe they would want us to make our first and foremost pri-

ority the health care needs of pregnant women and children. My hope is that this bill will gain the strong support from the President and the Congress that it deserves. I urge all of my colleagues to join us in taking this action immediately to assure basic minimum protection for those who need it the most.

Mr. President, I ask unanimous consent that my statement appear in the RECORD in its entirely, along with the other statements being submitted by the bill's cosponsors. I further ask unanimous consent that a summary of the bill, the bill itself, and letters of support be printed in a place immediately following my statement and the other Senators' statements.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3081

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Better Health Protection for Mothers and Children Act of 1990".

SEC. 2. NATIONAL STANDARDS FOR MEDICAID ELIGIBLITY FOR CHILDREN.

(a) COVERAGE OF ALL CHILDREN THROUGH AGE 18 WITH FAMILY INCOMES BELOW THE POVERTY LINE.—

(1) IN GENERAL.—Section 1902(1) of the Social Security Act (42 U.S.C. 1396a(1)) is amended—

(A) in paragraph (1)—

(i) by adding "and" at the end of subparagraph (B),

(ii) by amending subparagraph (C) of paragraph (1) to read as follows:

"(C)(i) children who have attained one year of age but have not attained 6 years of age, and (ii) children who have attained 6 years of age and have not attained 19 years of age,", and

(iii) by striking subparagraph (D);

(B) in paragraph (2)—

(i) in subparagraph (B), by inserting "clause (i) or (ii) or" before "subparagraph (C)",

(ii) in subparagraph (B), by inserting "or 100 percent, respectively," after "133 percent", and

(iii) by striking subparagraph (C); and

(C) in paragraph (3), by striking ", (a)(10)(A)(i)(VI), or (a)(10)(A)(ii)(IX)" and inserting "or (a)(10)(A)(i)(VI)".

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(a)(10)(A)(ii) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by striking subclause (IX).

(B) Section 1902(a)(10) of such Act is further amended, in the subdivision (VII) following subparagraph (E), by striking "or (A)(ii)(IX)".

(C) Section 1903 of such Act (42 U.S.C. 1396b) is amended—

(i) in subsection (f)(4), by striking "1902(a)(10)(A)(ii)(IX),", and

(ii) in subsection (i)(9), by striking "and children described in section 1902(a)(10)(A)(ii)(IX)".

(D) Section 1916(c)(1) of such Act (42 U.S.C. 1396o(c)(1)) is amended by striking "1902(a)(10)(A)(ii)(IX)" and inserting "1902(a)(10)(A)(i)(IV)".

(E) Section 1925 of such Act (42 U.S.C. 1396r-6) is amended, in subsection (a)(3)(C) and (b)(3)(C)(i), by striking "(i)(VI), or (ii)(IX)" and inserting "or (i)(VI)".

(b) ELIMINATION OF RESOURCE TEST.—Section 1902(1)(3) of such Act is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) no resource standard or methodology shall be applied;",

(2) by striking subparagraphs (B) and (C), and

(3) by redesignating subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively.

(b) ASSURING CONTINUITY OF SERVICES.—Section 1902(e)(7) of such Act (42 U.S.C. 1396a(e)(7)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(7)", and

(3) by adding at the end the following new subparagraph:

"(B) In the case of an infant or child described in subparagraph (B) or (C) of subsection (l)(1) or paragraph (2) of section 1905(n) who is eligible for, and has applied for, and has received medical assistance under the plan, but who, because of a change in the income of the family of which the infant or child is a member, would not otherwise continue to be described in such respective subparagraph, the State plan shall nonetheless treat the infant or child as continuing to be described in such subparagraph without regard to the change of income at least through the end of the 12th consecutive month beginning with the first month (in a continuous period of months) in which the infant or child met the requirements of the respective section.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 3. NATIONAL STANDARDS FOR PAYMENT RATES FOR OBSTETRICAL AND PEDIATRIC SERVICES.

(a) IN GENERAL.—Section 1926 of the Social Security Act (42 U.S.C. 1396r-7) is amended—

(1) In subsection (a)—

(A) in paragraphs (1) and (2), by inserting "(which payment rates are not less than the minimum payment rates specified under subsection(c))" after "in the succeeding period" each place in appears,

(B) in paragraph (4)(A), by striking "and does not include inpatient or" and inserting "or provided as inpatient hospital services and does not include",

(C) in paragraph (4)(B), by striking "and does not include inpatient or" and inserting "and includes inpatient hospital services for such children and does not include", and

(D) in paragraph (4)(B), by striking "18 years of age" and inserting "19 years of age";

(2) in subsection (b), by inserting "(1)" after "(b)";

(3) by redesignating subsections (c) and (d) as paragraphs (2) and (3), respectively;

(4) by adding at the end the following:

"(c)(1)(A) The Secretary shall develop a payment methodology for payment for obstetrical and pediatric inpatient hospital services of subsection (d) hospitals and children's hospitals under this title, based on the methodology used for computing payment under title XVIII for inpatient hospital services of subsection (d) hospitals (including payment for costs other than operating costs of inpatient hospital services).

"(B) In this subsection:

"(i) The term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B).

"(ii) The term 'children's hospital' means a hospital described in section 1886(d)(1)(B)(iii).

"(iii) The terms 'obsterical inpatient hospital services' and 'pediatric inpatient hospital services' means inpatient hospital services that relate to treatment of pregnancy or children under 19 years of age, respectively.

"(2)(A) Such methodology shall be developed in consultation with the Prospective Payment Assessment Commission and shall be based on data on the costs of inpatient hospital services of subsection (d) hospitals and of children's hospitals under this title as the basis for the computation of weighting factors for diagnosis-related groups of hospital discharges and for the parameters to be used in establishing outlier payments described in section 1886(d)(5)(A).

"(B) Such methodology shall use the average standardized amounts computed under section 1886(d).

"(3) In applying this methodology, the Secretary shall adjust payment of the disproportionate share amounts (described in section 1886(d)(5)(F)) to reflect the special rules described in section 1923 and the Secretary shall not take into account deductibles or coinsurance or limitations on amount, duration, or scope of services that may be imposed under this title or title XVIII.

"(4)(A) Subject to subsection (e), each State plan under this title shall provide for payment for inpatient hospital services of subsection (d) hospitals and of children's hospitals relating to obstetrical services, for discharges occurring on or after October 1, 1991, at rates that are not less than the rates of payment established under the methodology developed under this subsection.

"(B) Subject to subsection (e), each State plan under this title shall provide for payment for inpatient hospital services for infants under 1 year of age, for discharges occurring on or after October 1, 1992, at rates that are not less than the rates of payment established under the methodology developed under this subsection.

"(d)(1) The Secretary shall develop a payment methodology for payment for obstetrical services and pediatric services based on the methodology used for payment for physicians' services under section 1848.

"(2) Such methodology shall be developed in consultation with the Physician Payment Review Commission, shall be based on conversion factors established under section 1848(d), and shall consider providing for establishment of a global fee for pre-natal, delivery, and post-natal care associated with routine pregnancies.

"(3)(A) Subject to subsection (e), each State plan under this title shall provide for payment, for obstetrical services furnished on or after October 1, 1991, at rates that are not less than the rates of payment established under the methodology developed under this subsection.

"(B) Subject to subsection (e), each State plan under this title shall provide for payment for pediatric services for infants under 1 year of age furnished on or after October 1, 1992, at rates that are not less than the rates of payment established under the methodology developed under this subsection.

"(e)(1) The Secretary shall estimate, in June of each year (beginning with 1991) and in consultation with the Secretary of the Treasury—

"(A) the additional Federal revenues (as defined in paragraph (3)(A)) in the next fiscal year,

"(B) the other additional projected Federal expenditures (as defined in paragraph (3)(B)) in the next fiscal year,

"(C) the additional obstetrical expenditures (as defined in paragraph (3)(C)) in the next fiscal year, and

"(D) the additional pediatric expenditures 4 (as defined in paragraph (3)(D)) in the next fiscal year.

The Secretary, by not later than July 1 of each year (beginning with 1991), shall submit to Congress a report on such estimates and on the effect of such estimates, under paragraph (2), on the application of subsections (c) and (d) in the following fiscal year.

"(2) If the Secretary estimates, under paragraph (1) for a fiscal year, that—

"(A) the additional Federal revenues is less than the other additional projected Federal expenditures, subsections (c) and (d) shall not apply in the fiscal year;

"(B) the additional Federal revenues exceeds the other additional projected Federal expenditures, but does not exceed the sum of such other expenditures and the additional obstetrical expenditures—

"(i) subsections (c)(4)(B) and (d)(3)(B) shall not apply in the fiscal year, and

"(ii) in applying subsections (c)(4)(A) and (d)(3)(A), the minimum payment amount required shall be reduced pro rata by such proportion as the Secretary determines to be necessary so that the sum of the other additional projected Federal expenditures and the additional obstetrical expenditures (taking into account such proration) equals the additional Federal revenues;

"(C) the additional Federal revenues exceeds the sum of the other additional projected Federal expenditures and the additional obstetrical expenditures, but does not exceed the sum of such expenditures and the additional pediatric expenditures—

"(i) this subsection shall not reduce the minimum payment amounts required under subsections (c)(4)(A) or (d)(3)(A), and

"(ii) in applying subsections (c)(4)(B) and (d)(3)(B), the minimum payment amount required shall be reduced pro rata by such proportion as the Secretary determines to be necessary so that the sum of the other additional projected Federal expenditures, the additional obstetrical expenditures, and the additional pediatric expenditures (taking into account such proration) equals the additional Federal revenues; or

"(D) the additional Federal revenues exceeds the sum of the other additional projected Federal expenditures, the additional obstetrical expenditures, and the additional pediatric expenditures, this subsection shall not reduce the minimum payment amounts required under subsections (c)(4) or (d)(3).

"(3) In this subsection:

"(A) The term 'additional Federal revenues' means, with respect to a fiscal year, the net amount of revenues likely to be received in the Treasury in the fiscal year as a result of the amendments made by section 5 of the Better Health Protection for Mothers and Children Act of 1990, increased by the amounts by which the additional Federal revenues for any previous fiscal year exceeded the sum of the total amount of additional Federal expenditures made under this title in that previous fiscal year as a result of the amendments made by such Act and decreased by the amounts by which such revenues for any previous fiscal year was less than such sum in that previous fiscal year.

"(B) The term 'other additional projected Federal expenditures' means, with respect to a fiscal year, the total amount of the additional Federal expenditures to be made under this title in the next fiscal year as a result of the amendments made by the Better Health Protection for Mothers and Children Act of 1990, if subsections (c) and (d) did not apply.

"(C) The term 'additional obstetrical expenditures' means, with respect to a fiscal year, the amount by which the total Federal expenditures to be made under this title is increased is increased solely as a result of the application of subsections (c)(4)(A) and (d)(3)(A) (without regard to this subsection).

"(D) The term 'additional pediatric expenditures' means, with respect to a fiscal year, the amount by which the total Federal expenditures to be made under this title is increased is increased solely as a result of the application of subsections (c)(4)(B) and (d)(3)(B) (without regard to this subsection).

"(4) Subsections (c) and (d) shall not apply to States other than the 50 States and the District of Columbia.".

SEC. 4. INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) TEMPORARY INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Section 1905(b) of the Social Security Act (42 U.S.C. 1395d(b)) is amended—

(1) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, and

(2) by striking "The term" and inserting "Subject to paragraph (2), the term", and

(3) by adding at the end the following new paragraph:

"(2)(A) In the case of medical assistance described in subparagraph (B) or (C), for purposes of section 1903(a)(1) the Federal medical assistance percentage for one of the 50 States or the District of Columbia—

"(i) for calendar quarters in 1991, 1992, and 1993, shall be 100 percent,

"(ii) for calendar quarters in 1994, shall be 75 percent plus ¼ of the Federal medical assistance percentage otherwise determined under paragraph (1),

"(iii) for calendar quarters in 1995, shall be 50 percent plus ½ of the Federal medical assistance percentage otherwise determined under paragraph (1),

"(iv) for calendar quarters in 1996, shall be 25 percent plus ¾ of the Federal medical assistance percentage otherwise determined under paragraph (1), and

"(v) for calendar quarters after 1996, shall be the Federal medical assistance percentage otherwise determined under paragraph (1).

"(B)(i) Subject to clause (ii), medical assistance described in this subparagraph is medical assistance furnished to individuals described in section 1902(l) who are eligible for such assistance only because of the amendments made by the Better Health Protection for Mothers and Children Act of 1990, and including medical assistance for individuals—

"(I) who are older than 7 years of age,

"(II) who are eligible because of the repeal of the application of any resource standard, or

"(III) who continue eligibility for such assistance under section 1902(e)(7)(B) (as so amended).

(ii) Clause (i) shall not apply to medical assistance furnished to a child who was described in section 1902(l)(1)(D) (as such section was in effect before the date enactment of the Better Health Protection for Mothers and Children Act of 1990) to the extent the child would have been eligible for such medical assistance under the State plan (as such plan was in effect as of such date, taking into account any legislation enacted as of such date to authorize or appropriate funds to provide for such eligibility as of some future date).

"(C)(i) Subject to clause (ii), medical assistance described in this subparagraph is the sum of—

"(I) the difference between the amount of medical assistance made available under the plan for services described in subdivision (VII) of section 1902(a)(10) and the amount of such medical assistance that would have been made available under the State plan as in effect as of the date of the enactment of this paragraph, and

"(II) the difference between the amount of medical assistance made available under the plan for services described in subdivision (VII) of section 1902(a)(10) and the amount of such medical assistance that would have been made available under the State plan as in effect as of the date of the enactment of this paragraph.

"(ii) Clause (i) shall not include any medical assistance described in subparagraph (B).".

SEC. 5. FINANCING THROUGH INCREASE IN EXCISE TAX ON CIGARETTES.

(a) IN GENERAL.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax on cigarettes) is amended—

(1) by striking "$8" in paragraph (1) and inserting "$16", and

(2) by striking "$16.80" in paragraph (2) and inserting "$33.60".

(b) FLOOR STOCKS.—

(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1991, and held on such date for sale by any person, there shall be imposed the following taxes:

(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $8 per thousand.

(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, $16.80 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigarettes on January 1, 1991, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed by section 5701 of the Internal Revenue Code of 1986 and shall be due and payable on February 14, 1991, in the same manner as the tax imposed by such section is payable with respect to cigarettes removed on or after January 1, 1991.

(C) TREATMENT OF CIGARETTES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, cigarettes which are located in a foreign trade zone on Janu-

ary 1, 1991, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such cigarettes before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or (ii) such cigarettes are held on such date under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary of the Treasury or his delegate, provisions similar to sections 5706 and 5708 of such Code shall apply to cigarettes with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.

(3) CIGARETTE.—For purposes of this subsection, the term "cigarette" shall have the meaning given to such term by subsection (b) of section 5702 of such Code.

(4) EXCEPTION FOR RETAILERS.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1991, at the place where intended to be sold at retail.

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5701.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to cigarettes removed after December 31, 1990.

SEC. 6. DEMONSTRATION PROJECTS.

(a) IN GENERAL.—In order to allow States to develop and carry out innovative programs to test initiatives to promote cost-effective delivery of quality services to pregnant women and children under 19 years of age, the Secretary of Health and Human Services shall enter into agreements with several States for the purpose of conducting demonstration projects to study the effect of alternative strategies may include (1) developing programs for selective contracting with providers in a community, with financial incentives for the delivery of high quality, cost-effective, managed care, (2) using nonphysician providers in delivery care and complementary services (such as education and support services), and (3) using case management techniques to coordinate the provision of medical, social, and support services for pregnant women.

(b) WAIVER OF REQUIREMENTS.—The Secretary where he deems appropriate may waive the requirements of—

(1) section 1902(a)(1) of the Social Security Act (relating to statewideness), and

(2) section 1902(a)(23) of such Act (relating to freedom of choice), but only if there are assurances, satisfactory to the Secretary, that any restrictions on the provider from whom an individual may obtain medicare care shall not apply in emergency circumstances and does not substantially impair access to such services of adequate quality where medically necessary.

(c) APPLICATION.—No agreement shall be entered into under this section with a State unless the State submits an application to the Secretary. Such application shall be in such form and contain such information as the Secretary may specify.

(d) DURATION.—Each demonstration project under this section shall be conducted for a period of not to exceed 3 years.

(e) LIMIT ON EXPENDITURES.—The Secretary in conducting demonstration projects under this section shall limit the amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to $10,000,000 in each of fiscal years 1991, 1992, and 1993.

(f) EVALUATION AND REPORT.—

(1) For each demonstration project conducted under this section, the Secretary shall assure that an evaluation is conducted on the effect of the project with respect to—

(A) access to health care,

(B) costs of health care, and

(C) the quality and comprehensiveness of the care delivered.

(2) The Secretary shall submit to Congress an interim report containing a summary of the evaluations conducted under paragraph (1) not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1995.

BETTER HEALTH PROTECTION FOR MOTHERS AND CHILDREN ACT OF 1990, SENATORS ROCKEFELLER, HATCH, KENNEDY, AND RIEGLE

I. SETTING NATIONAL MEDICAID ELIGIBILITY STANDARDS FOR CHILDREN

All children through age 18 with family incomes below 100% of the Federal poverty level shall be eligible for health insurance coverage through the Medicaid program.

Assets tests shall be eliminated for pregnant women and children.

Enrollment for children shall be for a period of a minimum of one year.

Effective date: January 1, 1991.

II. SETTING NATIONAL STANDARDS FOR MEDICAID PAYMENTS TO PROVIDERS

National standards for payments for obstetric and pediatric services that will assure access, promote quality, reduce incentives for cost shifting and slow inflationary trends will be developed and implemented to the extent funds allow.

Improvements in Physician and Alternative provider payments: The Secretary shall in consultation with the Physician Payment Review Commission develop a methodology for payments to providers of obstetric and pediatric services consistent with Medicare principles and shall consider establishing a global fee for prenatal and delivery services.

Improvements in Hospital Payments: The Secretary shall in consultation with the Prospective Payment Assessment Commission develop DRG's for obstetric and pediatric care.

The improved reimbursement rates for obstetric services shall be implemented by October 1, 1991.

The improved reimbursement rates for pediatric services for children under one year of age shall be implemented by October 1, 1992.

The Secretary shall determine each July 1 (beginning in 1991) if the revenues collected allows the implementation of the above improvements. If the revenues collected by the provisions of this Act are insufficient to cover all the rate improvements the Secretary shall make improvements in the following order:

Partial implementation of improved rates for obstetric services

Full implementation of improved rates for obstetric services

Partial implementation of improved rates for pediatric services for children under one.

Full implementation of improved rates for pediatric services for children under one.

III. IMPROVING THE QUALITY AND COST EFFECTIVENESS OF CARE

In developing the Medicaid payment standards for services to pregnant women and children, the Secretary is directed to conduct demonstrations (in addition to those authorized in OBRA 1989) that promote quality and cost effective use of services. Specifically, the Secretary shall approve demonstrations that:

Develop programs for contracting with providers in a community, tying financial incentives to the delivery of high quality, cost effective managed care,

Use non-physician providers in delivering care and family planning and parenting education to pregnant women and children (i.e. mid-wives, nurse practitioners, physician assistants, etc.)

Use case management techniques to coordinate the provision of medical, social, and support services for pregnant women.

The Agency for Health Care Policy and Research is directed to develop outcomes measures and practice parameters for services for pregnant women. The AHCPR also is directed to advise the Secretary on incorporation of such guidelines and outcomes measures in Medicaid utilization review.

IV. FINANCING OF EXPANDED ELIGIBILITY AND PAYMENT REFORMS

Due to the urgent need for these improvements, State matching payments will be suspended for a period of time and the initial cost of the provisions in this Act shall be fully federally financed.

After 1994, the additional esxpense attributable to these expansions and improvements shall be shared by Federal and State governments in gradually increasing amounts. By 1997, the existing Federal/State Medicaid matching rate shall be restored.

V. DEFICIT OFFSET

The Federal excise tax on cigarettes shall be increased from 16 cents to 32 cents per pack. Improvements under this Act shall be tailored so that the cost does not exceed the revenue from this source ($2.8 billion in fiscal 1991, $13.5 billion over 5 years).

Note: A deficit offset does not imply a dedicated revenue source or establishment of a new trust fund. Medicaid remains a general revenue-financed program.

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, September 18, 1990.

Hon. JAY ROCKEFELLER,
Hart Senate Office Building, Washington, DC.

DEAR JAY: Your actions serve to underscore the old adage that where there's a will, there's a way! Your bill, "Better Health Promotion for Mothers and Children Act of 1990," with its bipartisan co-sponsorship, clearly asserts a prominent place for children in the competition for scarce budget allocations.

As a necessary short-term approach to assuring better health care for mothers and children, this legislation makes long overdue modifications to the medicaid program. For the medicaid program to live up to its promise, there must be participation by competent physicians, and particularly by pediatricians, since half of all recipients are children.

We look forward to working with you on this initiative and others as we continue our quest to assure that all children and pregnant women have access to quality, comprehensive health care.

Sincerely yours,

BIRT HARVEY, M.D.,
President.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
September 18, 1990.

Hon. JAY ROCKEFELLER,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER: On behalf of the American College of Obstetricians and Gynecologists, an organization representing more than 29,000 physicians specializing in the delivery of health care to women, I would like to commend you and your Senate colleagues for introducing the Better Health Protection for Mothers and Children Act of 1990.

We are pleased to see strong interest in expanding eligibility, eliminating resource tests, assuring continuity of services, and increasing reimbursement rates for obstetric services. These are issues that the College has long had an interest in addressing as a means of assuring greater access to needed health care services. We would also like to voice our strong support for raising the excise tax on cigarettes with a corresponding dedication of revenue to expanding care for pregnant women, infants, and children.

While we support the general direction of the legislation, ACOG has many concerns about use of the resource-based relative value scale (RBRVS) to set Medicaid obstetric fees. In determining whether this system would work for Medicaid, we must look at the Medicare RBRVS for a model. Although we have not been able to analyze the fee schedule for obstetric services since information on vaginal deliveries was not included, we have identified the method for incorporating professional liability costs as being inadequate. If this method is not modified significantly prior to Medicare implementation, it will encourage more obstetrician-gynecologists to give up their obstetric practices. And if such a system were adopted for Medicaid, it would discourage obstetrician-gynecologists from accepting Medicaid patients. We are not rejecting the possibility that a resource-based relative value scale could be developed for obstetric care, but only that one cannot fine tune the Medicare RBRVS for use in Medicaid and expect the result to be increased access to obstetric care.

In sum, we are greatly encouraged to see interest in increasing access to obstetric and pediatric care services, but we must also make clear our concerns about development of the payment system. We stand ready to assist you in any way we can.

Sincerely,

HAROLD A. KAMINETZKY, M.D.,
Director—Practice Activities.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, September 17, 1990.

Hon. JOHN D. ROCKEFELLER IV,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER: Thank you for sharing with us a description of the proposal that you and Senators Hatch, Kennedy and Riegle are drafting to address the problem of access to health care for children and pregnant women through the Medicaid program. We are interested in your proposal and look forward to working with you on it.

As you know, the American Hospital Association is a strong advocate of Medicaid reform, and has been working hard at the federal and state levels to improve eligibility, coverage, and reimbursement levels, particularly for the poorest and most vulnerable populations. Like many other organizations, we currently are engaged in an industry-wide effort to look at overall national reform in the health care system. But we realize the need for incremental changes to address the continuing needs of children and pregnant women.

We particularly applaud three aspects of your proposal:

Children in families with income up to 100 percent of the federal poverty level would be covered up to focused, for good and obvious reasons, on younger children and pregnant women. As a result, however, they have neglected the critical needs of adolescents.

The minimum enrollment period would be one year. This new provision would assure continuity of coverage for children who move back and forth in and out of poverty over the course of a year. It would also provide a transitional period of coverage for children in families with more permanent increases in income. Finally, this provision is necessary to achieve the initiative's overall goal of increasing managed care.

The federal government would assume responsibility for funding expanded eligibility and payment reform until 1994, when the Federal/State matching program would be reinstated over a period of three years. We believe the Federal government should assume greater financial responsibility for financing health care for the poor, and this proposal would provide very necessary relief for states. States are stretched to the limit to fund the existing program, and many are attempting to balance the Medicaid budget by further cutting provider reimbursement—a strategy that yields reduced access for beneficiaries, growing financial shortfalls for hospitals, and increasing lawsuits for states.

In terms of financing, we believe that a cigarette tax is an appropriate source of financing health care, although we are concerned that such a funding source may not be broad or stable enough to support the extensive reforms envisioned in the proposal. This is particularly worrisome in light of your statement that "improvements . . . shall be tailored so that the cost does not exceed the revenue." We would urge you to find additional sources of revenue to implement these provisions, and to be more explicit about how the improvements would be tailored if the anticipated funding does not materialize.

We also sympathize with the proposal's stated objectives of assuring access, promoting quality, reducing incentives for cost shifting and slowing inflationary trends. We were particularly pleased to see an explicit statement that first priority should be given to improved reimbursement for inpatient and outpatient services for pregnant women and children. As you know, however, achieving all of these goals simultaneously can be extremely difficult, and some goals—such as increasing reimbursement and slowing inflationary trends—seem to be inherently contradictory. As the proposal correctly notes, the only hope for balancing these goals is to use available funds more wisely, and managed care provides one of the few effective tools for achieving this objective. But it should be kept in mind that a responsible managed care program takes a long-term approach to the health of enrollees, and therefore often identifies new health care needs. For the population in question here—children and pregnant women who have lacked coverage and therefore may have gone without care for many years—managed care therefore may not yield immediate cost savings, and could even increase short-term costs.

Finally, we support the proposal's call for development of outcomes measures and practice parameters. These steps can help call attention to the problems of underservice as well as excess service. When appropriately implemented, as guidelines rather than absolutes, practice parameters can be effective vehicles for educating consumers, providers, Medicaid programs and others.

We are very encouraged by and supportive of your interest in expanding health insurance coverage for children and pregnant women, and look forward to working with you further.

Sincerely,

PAUL C. RETTIG,
Executive Vice President.

AMERICAN INFORMATION TECHNOLOGIES,
Washington, DC, September 10, 1990.

Ms. KAREN POLITZ,
Legislative Assistant to Hon. Jay Rockefeller,
U.S. Senate, Washington, DC

DEAR KAREN: Thank you for sending me Senator Rockefeller's new proposal for expanding Medicaid to cover all pregnant women and children under age six who fall below the poverty level. We are generally supportive of the Senator's approach to offer some relief to a key segment of the uninsured population. We believe Medicaid expansion programs should be• paid for through general revenues.

We are pleased that his proposal includes important provisions to address cost management and quality of care, including provider contracting, case management, and incentives for appropriate patient actions. Ameritech participated in the meetings between the Washington Business Group on Health and the Senator that focused on including these quality-related elements in any health legislation introduced. We also support the Senator's emphasis on giving flexibility to the states to design payment systems with a priority placed on patient services.

An effective Medicaid expansion program can be viewed as a positive investment for the future. Good prenatal care has been shown to have a significant financial payback. A healthy baby, given quality medical care throughout its chidlhood, is more likely to become a productive member of the work force than a child with acute or chronic medical problems resulting from inadequate prenatal or pediatric care.

We will be happy to review additional proposals and comment on legislative initiatives as the health care policy debate unfolds.

Sincerely,

DOROTHY A. WALSH.

BLUE CROSS AND BLUE SHIELD ASSOCIATION,
Washington, DC, August 15, 1990.

Hon. JOHN D. ROCKEFELLER IV,
Hart Senate Office Bldg.,
Washington, DC

DEAR SENATOR ROCKEFELLER: Thank you for giving us the opportunity to comment on an outline of your proposal to expand

coverage and improve payment levels under the Medicaid program. We applaud your continuing efforts concerning the health coverage of low-income families.

Your proposal would:

Extend Medicaid coverage to all children through age 18 with family income below 100 percent of the federal poverty level;

Set a national standard for Medicaid payment to providers, with priority given to improving reimbursement for services provided to pregnant women and children;

Incorporate cost management initiatives to promote effective use of services provided to pregnant women and develop outcome measures and practice parameters for services provided to high-risk pregnant women; and

Suspend state matching payments for a period of time for the expansions in this Act and finance these expansions through an increase in the federal excise tax on cigarettes.

The Blue Cross and Blue Shield Association (BCBSA) strongly supports the outline of your proposal to extend coverage to children whose family income is less than the federal poverty level. We support this extension as part of our overall recommendation to expand Medicaid coverage for all individuals and families with incomes below the federal poverty level.

Given the tight budget situation at both the federal and state levels, we certainly agree that it makes sense to continue the effort to provide expanded coverage for high-risk populations such as pregnant women and children. However, as the budget permits, we also believe it is important to make progress on improving coverage of those individuals with incomes significantly below the poverty level who currently cannot qualify for Medicaid coverage.

We also support your proposed improvements in Medicaid provider payments. We too have become increasingly concerned about low Medicaid reimbursement rates for providers in many states. Not only does this problem result in access to care problems for Medicaid patients—especially on the physician side—but it also causes significant hardship for providers who leave their doors wide open for Medicaid and other low-income patients. This is becoming an increasing problem and we support increased provider payment levels in the Medicaid program, where appropriate.

Likewise, we support your proposal to build in cost management initiatives for services provided to pregnant women and to develop outcome measures and practice parameters for services provided to this population.

While we do not have any views on changing the financing of the Medicaid program, BCBSA supports your recognition of the fiscal problems faced by the states in your proposal to suspend state matching payment for these expansions for a period of time, while maintaining states' traditional responsibility for the Medicaid program.

We would appreciate an opportunity to review and comment further on your proposal, once it is in legislative form. Thank you again for the opportunity to present our views.

Sincerely,

MARY NELL LEHNHARD.

CHILDREN'S DEFENSE FUND,
Washington, DC, August 13, 1990.

Hon. JOHN ROCKEFELLER,
Senate Finance Committee, U.S. Senate, Washington, DC.

DEAR SENATOR ROCKEFELLER: I want to express our strong support for your efforts to improve the health of America's children through expansion of Medicaid. The "Building Better Health Protection for Mothers and Children" Act would extend crucial health benefits to more than a million uninsured low-income children and adolescents and guarantee continuity of coverage for more than 12 million children eligible for assistance. As you know, CDF's health agenda has long proposed that Medicaid be extended to all pregnant women and children with family incomes below 200 percent of the federal poverty level. Your bill represents an important "down payment" toward fulfilling the vision of universal access to health care for children.

The legislation could not come at a more critical time. According to the Bush Administration's own White House Task Force on Infant Mortality, this nation could, through modest steps easily within its reach, save 10,000 babies a year, eliminate long-term disabilities in another 100,000 infants, and achieve long-term savings of $2 billion. Your legislation would provide essential health care coverage to reduce infant mortality, increase immunization levels, provide checkups, and ensure necessary remedial care for children with disabilities and chronic health problems. Study after study has demonstrated clearly the value of preventive investment. For every $1 the nation invests in prenatal care we can save $3, and for every $1 used for immunizations we save $10 and more in preventable disease costs.

We look forward to working with you to enact this vital legislation. Improvements in health care coverage are urgently needed for America's 12 million uninsured children. Another generation of low-income children should not be left to grow up without access to care.

Sincerely,

MARIAN WRIGHT EDELMAN.

NATIONAL ASSOCIATION OF CHILDREN'S HOSPITALS AND RELATED INSTITUTIONS, INC.,
Alexandria, VA, September 18, 1990.

Hon. JOHN D. ROCKEFELLER IV,
U.S. Senate, Washington, DC.

DEAR SENATOR ROCKEFELLER: On behalf of the National Association of Children's Hospitals and Related Institutions may I express our support for your efforts to address the need for expanded Medicaid assistance for millions of children whose families have incomes below the federal poverty level and are unable to obtain private insurance.

Children's hospitals are major providers of health care to children of low income families who rely on either public aid or charity to pay for their health care. In 1989 NACHRI issued a comprehensive set of recommendations to remove the obstacles that stand in the way of children's access to care under Medicaid.

The proposals you have listed in your two page outline have great potential to address significant problems with eligibility, enrollment, and reimbursement affecting children's access to care under Medicaid as well as important issues of financing, quality assurance, and cost effectiveness that are critical to the long-term viability of Medicaid. We look forward to reviewing the details of the bill you plan to introduce.

We are particularly encouraged by the fact that your proposals would expand upon S. 2459, the "Medicaid Child Health Act," which you have co-sponsored and NACHRI has endorsed. This bill pursues the bipartisan agenda of Medicaid reform for children initiated by the Finance Committee in 1989.

We believe that Medicaid reform for children is one of the most cost-effective investments we can make in the future health of our children and economic productivity of our nation. It should be an integral part of our deficit reduction strategy.

Sincerely,

ROBERT H. SWEENEY,
President.

NATIONAL ASSOCIATION OF MANUFACTURERS,
September 13, 1990.

Hon. JAY ROCKEFELLER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR JAY: The National Association of Manufacturers is pleased to support your efforts to expand Medical services for poor children on a phased basis and make related improvements to the Medicaid program. We understand the proposal, "Building Better Health Protection for Mothers and Children," is slated for introduction in mid-September.

Setting national standards for payment to hospitals and physicians under Medicaid (targeted to children and pregnant women) to assure access and quality and help reduce current practices of cost-shifting of private-paying patients is an important step in trying to bring overall health care costs under control. In response to yearly 15 to 20 percent health care inflation, employers, who sponsor health care coverage for over 139 million Americans, engage in numerous cost containment efforts from managed care to increased employee cost-sharing; however, health care providers continue to raise their fees. This occurs partially as a result of inadequate government reimbursement and providers attempting to offset unpaid bills (uncompensated care) of those persons who lack health care coverage. Expanding eligibility for children through age 18 should help to reduce the amount of uncompensated care delivered by hospitals and physicians.

The proposal would also direct the U.S. Agency for Health Care Policy and Research to develop specific programs for contracting with providers, tying financial incentives to the delivery of cost-effective managed care programs and to developing outcome measures and practice parameters for high-risk pregnant women. While only applying to Medicaid-eligible pregnant women, such research and program development measures can have applications for other Medicaid eligibles and federal health programs as well as for the private sector.

Financing these expansions presents some real challenges, given budget deficits and a worsening economy. Rather than a single source of revenue such as the proposed increased cigarette tax, we urge you to consider a combination of options and also reallocating certain funds from the current budget to finance the proposed expansions.

The NAM commends your leadership on seeking to improve Medicaid services for poor children who are America's future citizens and workers. We are pleased to work with you on this important issue.

Sincerely,

JERRY J. JASINOWSKI.

NATIONAL SMALL BUSINESS UNITED,
August 31, 1990.

Hon. JOHN D. ROCKEFELLER IV,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR ROCKEFELLER: At National Small Business United (NSBU), we are very pleased that you are about to introduce Building Better Health Protection for Mothers and Children, a Medicaid expansion bill. We believe that broadened Medicaid eligibility, especially for children and pregnant women, is necessary in today's plagued health care climate, and we will support your bill.

As you know, NSBU has taken an active role in helping to develop workable solutions to the country's crippling health care crisis. We are pleased to have been able to work with you in your role as Chair of the Pepper Commission, and we know that you understand the unique problems facing small businesses in the health care market.

NSBU believes that your bill will actually reduce aggregate health care costs by alleviating problems in the earliest stages and by preventing many expensive health problems later in life through proper prenatal care. This judicious Medicaid expansion will also help prevent the costs of many individuals without insurance from being shifted to the private sector. Thereby, your bill should help to stem rapidly increasing health insurance premiums and help small employers to better afford health insurance for their employees.

Thanks for your continuing leadership in trying to find pragmatic solutions to our profound health care problems.

Sincerely yours,

JOHN PAUL GALLES,
Executive Vice President.

U.S. CHAMBER OF COMMERCE,
September 13, 1990.

Hon. JOHN D. ROCKEFELLER IV,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER: I am pleased to offer the views of the U.S. Chamber of Commerce concerning your proposal to improve access to health services for poor mothers and children through the Medicaid system.

The Chamber supports your goal of protecting low-income mothers and children. We believe that the Medicaid system should be reformed so that all Americans with incomes below the federal poverty level are assured coverage. In recognition of state and federal budget constraints, our health policy specifically supports phasing in expanded coverage, with mothers and children as a priority. Enclosed is the Chamber's Statement of Access to Health Care.

Currently, the Chamber is working with a coalition which comprises representatives of business, insurers, health-care providers and children's advocates in support of expanded Medicaid eligibility for poor children. We were signatory to the enclosed ad, which appeared in the September 5, 1990 edition of the Washington Post, urging Congress to make Medicaid reform for children a priority.

The broad support these Medicaid reforms have garnered is encouraging. The nation must move forward in those areas where consensus exists. Given the strong and broad support for Medicaid expansion, this is a logical starting point.

In addition to expanding Medicaid eligibility for poor children, your proposal contains several innovations designed to improve the quality and cost-effectiveness of care delivered within the system. We believe that health cost management is critical in both the public and private sectors. And the Chamber strongly supports the development of outcomes measures and practice guidelines to assure appropriate and effective care. The Chamber has not taken a policy position on national standards for Medicaid payments to health-care providers.

However, the Chamber does not support the financing mechanism in your proposal which would double the federal excise tax on cigarettes. Such a tax would neither significantly reduce smoking nor tend to diminish the demand for Medicaid services.

The National Cancer Foundation (NCF), the research affiliate of the U.S. Chamber, recently summarized the major research findings on the economic effects of excise tax increases. Among these findings is that such taxes fail to achieve their commonly stated ends—discouragement of consumption of potentially harmful products—and render attainment of tax equity goals more difficult. The NCF findings have been published, and a summary was presented to the Senate Finance Committee for inclusion in its May 24, 1990 hearing record on the health costs of smoking. I have enclosed a copy of both documents.

If you have any questions regarding the Chamber's position, please feel free to have your staff contact Karen Berg Brigham, manager of health care policy, at 463-5514.

We commend you for your leadership in the health care area and offer our assistance as you continue to work on these issues.

Sincerely,

DONALD J. KROES.

WASHINGTON BUSINESS
GROUP ON HEALTH,
September 6, 1990.

Hon. JOHN D. ROCKEFELLER IV,
724 Hart Senate Office Building, Washington, DC.

DEAR SENATOR ROCKEFELLER: We are pleased to offer our support for expansion of Medicaid to cover all children (under age 18) under the federal poverty level, improvement of Medicaid payments to providers, and improvement of the quality and cost effectiveness of Medicaid care delivered.

WBGH and its members are struggling with many of the same issues regarding our health care system that you in the Congress are facing. We believe that broad system reform is essential. Exactly how to achieve this reform is a complex question which we are tackling within our Board of Directors and Health System Reform Committee.

In the meantime, we believe that the rate of poverty and lack of health care coverage for poor American children is unacceptable and must be corrected in the near term. While the country debates health system reform holding America's poor children hostage would be unconscionable. Therefore, our Board has endorsed the immediate expansion of Medicaid for children under the federal poverty level.

We believe that a healthy economy is based on healthy workers and consumers. These children are our future and it is in our mutual interest to give them a healthy start.

At the same time, we must underscore our concern for expanding access to what we feel is a flawed health care delivery and financing system. We believe that it is in all our interests to more efficiently use our health care dollars. Therefore, we base our support on the understanding that this expansion will include aggressive cost management tools to stretch limited resources. There are many in the business community that firmly believe that expansion of access only be to competing systems of managed care which are responsible for the quality and efficiency of the care rendered.

We are pleased to see that you have incorporated quality and cost effectiveness initiatives into your proposal. Attached is a Medicaid cost management proposal designed by a subcommittee of our Board. We believe it offers strategies for more effective health care purchasing.

Finally, we have examined our members' willingness to use cigarette excise taxes to fund Medicaid expansion. In general, business has an aversion to industry-specific taxes. However, there is a recognition that cigarette smoking causes health problems which increase our health spending. An informal survey or our members (the health policy experts within companies) found a general acceptance of the cigarette excise tax for the purpose of our members (the findings of which are yet to be released), when given a list of options for financing health care expenditures, sin taxes (including alcohol and cigarettes) were the third most popular choice.

It is important to note, however, that there is concern among our Board about the use of sin taxes due to the implicit assumption that the taxes will lead to reduce consumption and therefore a shrinking tax base. Thus, we do not view sin taxes as a stable long term financing solution.

Thank you for the opportunity to comment on this very worthy initiative. if you have any questions regarding our position or the enclosures—please contact Cathy Certner.

Sincerely,

WILLIS B. GOLDBECK,
President.

Mr. HATCH. Mr. President, today I am pleased to join Senators ROCKEFELLER, KENNEDY, and others in the introduction of the Better Health Protection for Mothers and Children Act of 1990.

Mr. President, there are two things that I have learned about our current health care system. First, America provides the best health care in the world; and second, there are those in our society who do not have access to this excellent care. If we want to continue to think of our health care system as the best in the world, we have to find a way to ensure that all Americans have access to it. The bill being introduced today is one step toward achieving this goal.

The Medicaid program must be returned to its original purpose—to provide access to health care for the economically disadvantaged. Medicaid needs to be expanded to cover all individuals and families with incomes below the Federal poverty level. However, at the same time, we must be realistic about the budget situation. It makes good sense to focus our efforts at this time on expanding coverage for those most at risk—pregnant women, infants, and children.

Many of our Nation's children and pregnant women face inadequate access to good quality, affordable health care. Strict Medicaid eligibility rules leave millions of poor children uninsured. In many States, low Medicaid reimbursement rates for providers have exacerbated the problem of access to health care.

This bill begins to address the problem of health care availability for low-income families. The bill would guarantee Medicaid coverage for all children in families with incomes below 100 percent of the Federal poverty level and provide enrollment for a minimum period of 1 year so that children can count on continuous Medicaid coverage.

The bill provides for the setting of national standards for improved payments to hospitals, physicians, and alternative providers for obstetric services and for pediatric services for children under one. The bill also supports demonstration programs that promote quality and cost-effective use of services to pregnant women and children and that provide for the development of outcome measures and practice guidelines for services for pregnant women.

The initial costs of these reforms will be fully financed at the Federal level with State matching payments suspended through 1994. After 1994, the States will gradually contribute their share of the additional costs of the expansions and improvements in coverage. With regard to financing these changes, as an offset to the costs of the reforms, the bill proposes that the Federal excise tax on cigarettes be doubled.

Mr. President, this bill will provide health care to this country's most vulnerable citizens, low-income pregnant women and children. This bill is an investment in the future of this country. I urge my colleagues to join me in cosponsoring this bill to build better health protection for mothers and children.

Mr. KENNEDY. Mr. President, Today we face a crisis in the health care system that threatens the well-being of every American family. The challenge is more serious than at any time since the enactment of Medicare in 1965, and no one is immune—young or old, rich or poor, business or labor, city or farm, insured or uninsured.

In my view, health care should be a basic right for all, not just an expensive privilege for the few. My family has been fortunate in being able to obtain the best in health care, and it ought to be available to every family.

Yet, there are 37 million Americans who have no health insurance at all, either public or private. There are 60 million more with inadequate insurance. Fifteen million American families annually go without health care because they cannot afford it, and one-half of all the people hounded by collection agencies are in debt because they have medical bills they cannot pay.

The crisis is not confined to the 100 million Americans who are uninsured or underinsured. Key health care institutions on which millions of Americans depend are on the verge of collapse.

In New York City, the average wait in emergency rooms is 3 days before a patient can be admitted to the hospital. In Los Angeles, more than half the private hospitals have dropped out of the Los Angeles trauma care network that provides emergency services for the most seriously injured because they can no longer afford to care for uninsured patients.

Virtually every State in the country is reporting that patients are piled up in emergency rooms because of a lack of hospital beds. Forty percent of the Nation's hospitals fail to meet health and safety standards.

Whether a patient is rich or poor, insured or uninsured, these conditions have the potential to put life at risk. And even Americans that are fully insured today are just one paycheck, one job change, one management decision to drop insurance coverage from being out of luck tomorrow.

One of the most troubling aspects of the current crisis is the devastating impact on children. Every child in America deserves a healthy start in life. But too many fail to get it because their parents can't afford it and society won't provide it. One in every five children in America today—12 million children in all—have no health insurance coverage. Two out of every three pregnant women who are uninsured do not get the low-cost, effective prenatal care that their babies need. It is no wonder that 18 other industrial nations have a better record in keeping babies alive than the United States. Forty percent of our children do not even receive basic childhood vaccines.

American children are the innocent victims of the health care crisis and that means that America is the victim, too—because our children are our future.

The crisis in health care is not only a health issue, it is an economic issue as well. The United States spends more than any other country on health care. We spend 40 percent more per capita than Canada, 90 percent more per capita than West Germany, and more than twice as much as Japan. No wonder that American firms are struggling to compete in world markets, that health care has become a flash point in labor negotiations, and that business and labor alike are demanding a comprehensive health policy.

I believe that the time has come when universal health care and tough cost control measures can and must be enacted. I believe the American people are demanding action, and when the people lead, the politicians will follow.

The legislation we are introducing today represents as downpayment on the comprehensive reform that must be enacted. It targets one of the most critical health problems in our current system—inadequate coverage under Medicaid for poor pregnant women and children, and I urge the Senate to enact it.

By Mr. INOUYE (for himself and Mr. MCCAIN):

S. 3082. A bill to expand the authority of the Secretary of the Interior on connection with the investment of Indian trust funds, and for other purposes; to the Select Committee on Indian Affairs.

INVESTMENT OF INDIAN TRUST FUNDS

● Mr. INOUYE. Mr. President, I am pleased to be introducing legislation which will allow Indian tribes and individuals the right to exercise some choice in the management of their own funds which are held in trust by the Bureau of Indian Affairs of the Department of the Interior. Currently the BIA manages approximately $1.9 billion on behalf of more than 300,000 individual Indians and 200 tribes. Most of the individual accounts are relatively small and comprise about one-fourth of the total while the tribal accounts, earnings from the sale of lease of trust assets, constitute about one-third with the remainder consisting of judgment funds resulting from successful legal claims of Indians against the Federal Government. The statute directing the BIA to manage these moneys was last amended in 1938 and has been interpreted by the Interior Solicitor as not allowing the investment of these funds in private management companies. My proposed amendment, developed in response to requests from a number of tribes, would provide such authority to be exercised at the option of the tribe or individual. Specifically, the option would be use contract for the management services of a mutual fund provided that the pool of securities managed contains only federally issued or guaranteed securities which is the restriction under current law. The Secretary of the Interior must examine the proposed management arrangement to ensure that the principal of the trust funds will not be at risk and the Indian tribe or individual exercising this option is required to waive any liability of the Secretary regarding the yield or net interest income generated by such management arrangements. I believe this amendment is consistent with the important Federal Indian policy of self-determination while providing sufficient safeguards as is appropriate for Indian trust funds.

This bill also amends the 1974 Indian Financing Act by authorizing the Secretary of the Interior flexibility in the disposition of funds appropriated under the revolving loan program. Current law restricts the making of direct loans to eligible Indians or tribes only after the applicant has demonstrated that he or she cannot get a loan from a private bank or other financial institution. My amendment allows the Secretary to also use these funds in conjunction with a loan by a bank, to contribute to the loan guaranty fund, or to make interest subsidy payments authorized by other provisions of the Indian Financing Act. A recent report by the Interior Department severely criticized the BIA for its management of the revolving loan fund. By comparison, the loan guaranty and business grant programs were performing quite well primarily because these funds supported the commitment of the private lender. This amendment will allow the Secretary to reallocate revolving loan funds, at his discretion, to these other, more successful programs.

I anticipate that the minor changes in existing law and current programs contemplated under this bill will be considered expeditiously in the time remaining in this session of the Congress. Although minor these changes are important and will demonstrate the ability of Congress to respond to the needs of Indian people.●

By Mr. DASCHLE (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. INOUYE, and Mr. MCCAIN):

S. 3083. A bill to establish a tribal cattle herd pilot project, and for other purposes; to the Select Committee on Indian Affairs.

TRIBAL CATTLE HERD PILOT PROJECT ACT

● Mr. DASCHLE. Mr. President, on behalf of Indian tribes in my State that asked that I sponsor this proposal, I am introducing legislation today to create a Tribal Cattle Herd Pilot Project [TRICAPP]. The following Senators asked to be listed as cosponsors: BAUCUS, BURDICK, CONRAD, INOUYE, and MCCAIN.

The proposal would establish a loan program in the Bureau of Indian Affairs to help Indian tribes establish cattle herds. The cattle would be maintained by the tribes and offered to tribal members who meet certain guildelines to start their own cattle operations.

The program's goal is to offer members of Indian tribes an opportunity to become self-sufficient through ranching enterprises. The program draws on two of the principle natural resources on most reservations: grasslands and people. TRICAPP is designated to help tribes put these resources to their best use.

According to Wayne Ducheneaux, chairman of the Cheyenne River Sioux Tribe, in testimony before the House Interior Committee, TRICAPP could provide 257 families with the opportunity to start up or expand cattle operations. The reservation includes more than 1.2 million acres of rangeland, with surplus acreage for 6,775 head of cattle. Another reservation in my State wants to start a dairy herd that would be a source of animals for 4-H projects. The idea is to give young people an alternative to drugs and alcohol.

The biggest hurdle Indians face in starting a livestock operation is credit. To help tribes scale this hurdle, the interest rate on the loans would be 5 percent, the rate applied by the Department of Agriculture in loan programs for persons who are members of so-called socially disadvantaged groups. TRICAPP could offer loan guarantees and direct loans. The program is based on an earlier BIA program that is no longer in operation.

The program would be open to all tribes, but BIA may give preference to the five Northern Great Plains Indian tribes that developed the proposal—Cheyenne River Sioux, Crow Creek Sioux, Oglala Sioux, Fort Belknap and the Northern Cheyenne.

The project includes research and technical assistance to be provided by South Dakota State University and Montana State University to help the tribes and their members improve management and marketing skills.

Mr. President, we must find creative ways to encourage economic development on the reservations if we are ever to break the cycle of dependence, and the related problems of crime, unemployment, disease, and drug and alcohol abuse. This is a proposal developed by the tribes.

They are the best judge of what will work on their reservations. They believe that TRICAPP is one means to improve the way of life for many Indians.●

ADDITIONAL COSPONSORS

S. 190

At the request of Mr. CRANSTON, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 190, a bill to amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay without reduction in the amount of the compensation and retired pay.

S. 1651

At the request of Mr. MCCAIN, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 1651, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United States Organization.

S. 1676

At the request of Mr. PELL, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1676, a bill to strengthen the teaching profession, and for other purposes.

S. 1813

At the request of Mr. GORTON, the names of the Senator from Mississippi [Mr. LOTT] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 1813, a bill to ensure that funds provided under section 4213 of the Indian Alcohol and Substances Abuse Prevention and Treatment Act of 1986 may be used to acquire land for emergency shelters.

S. 1981

At the request of Mr. HOLLINGS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1981, a bill to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, and for other purposes.

S. 2415

At the request of Mr. DOMENICI, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 2415, a bill to encourage solar and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Act of 1978.

S. 2535

At the request of Mr. MCCONNELL, the names of the Senator from Utah [Mr. HATCH] and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 2535, a bill to provide for a comprehensive health care plan for all Americans, and for other purposes.

S. 2640

At the request of Mr. DASCHLE, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 2640, a bill to amend title XVIII of the Social Security Act to prevent fraud and abuse and encourage competition in the sale of Medicare supplemental insurance.

S. 2725

At the request of Mr. ARMSTRONG, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2725, a bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Care Act.

S. 2813

At the request of Mr. GRAHAM, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 2813, a bill to authorize the minting of commemorative coins to support the training of Ameri-

can athletes participating in the 1992 Olympic games.

S. 2819

At the request of Mr. MOYNIHAN, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2819, a bill to amend title XVIII of the Social Security Act to provide coverage of services rendered by community mental health centers as partial hospitalization services, and for other purposes.

S. 2822

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 2822, a bill to promote and strengthen aviation security, and for other purposes.

S. 2860

At the request of Mr. DASCHLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2860, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for travel expenses of certain loggers.

S. 3035

At the request of Mr. LIEBERMAN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 3035, a bill to protect the national security by prohibiting profiteering of essential commodities during periods of national emergency.

S. 3051

At the request of Mr. PRESSLER, the names of the Senator from Kansas [Mr. DOLE] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 3051, a bill to reduce the pay of Members of Congress corresponding to the percentage reduction of the pay of Federal employees who are furloughed or otherwise have a reduction of pay resulting from a sequestration order.

S. 3059

At the request of Mr. DECONCINI, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Florida [Mr. MACK], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 3059, a bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges.

S.J. RESOLUTION 283

At the request of Mr. CRANSTON, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Joint Resolution 283, a joint resolution to commemorate the centennial of the creation by Congress of Yosemite National Park.

S.J. RESOLUTION 346

At the request of Mr. BOSCHWITZ, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of Senate Joint Resolution 346, a joint resolution to designate October 20 through 28, 1990, as "National Red Ribbon Week for a Drug-Free America."

SENATE JOINT RESOLUTION 349

At the request of Mr. DECONCINI, the names of the Senator from Tennessee [Mr. GORE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Connecticut [Mr. DODD], the Senator from Ohio [Mr. GLENN], the Senator from Indiana [Mr. COATS], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of Senate Joint Resolution 349, a joint resolution designating October 1990, as "Italian-American Heritage and Culture Month."

SENATE JOINT RESOLUTION 364

At the request of Mr. REID, the names of the Senator from Nevada [Mr. BRYAN], the Senator from Alabama [Mr. SHELBY], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 364, a joint resolution to designate the third week of February 1991 as "National Parents and Teachers Association Week."

SENATE CONCURRENT RESOLUTION 125

At the request of Mr. COHEN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of Senate Concurrent Resolution 125, a concurrent resolution expressing the sense of Congress regarding adequate funding for long-term health care services provided through the Medicare and Medicaid Programs.

SENATE RESOLUTION 325—COMMENDING THE ESTABLISHMENT OF THE EISENHOWER CENTER FOR THE CONSERVATION OF HUMAN RESOURCES AT COLUMBIA UNIVERSITY

Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. D'AMATO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 325

Whereas the Conservation of Human Resources Project at Columbia University is now in its fifth decade;

Whereas General Dwight David Eisenhower, as president of Columbia University from 1948 to 1950, invigorated the Conservation Project with energy and direction;

Whereas the Conservation Project was established to both examine economic transformations from the viewpoint of human resources and analyze the response of educational, training, and employer institutions to such transformations;

Whereas the Conservation Project has published some 250 books and reports on human resources; and

Whereas in recognition of Dwight David Eisenhower's service to his country and to Columbia University, the Conservation of Human Resources Project has been renamed the Eisenhower Center for the Conservation of Human Resources: Now, therefore, be it

Resolved, That, in this centennial year of Dwight David Eisenhower's birth, the newly rechristened Eisenhower Center for the Conservation of Human Resources at Columbia University has the full and enthusiastic support of the United States Senate.

● Mr. MOYNIHAN. Mr. President, I rise to introduce legislation to add the support of the Senate to the newly rechristened Eisenhower Center for the Conservation of Human Resources at New York University.

The Center was first known as the Conservation of Human Resources Project. When Gen. Dwight Eisenhower became president of Columbia in 1948 he invigorated the Conservation Project, as it was known, and set it on the course that resulted in the publication of over 250 books and reports. The Conservation Project has studied the effect of economic transformations on human resources, particularly the responses of educational, training, and employer institutions to these transformations, and made valuable contributions.

In the centennial of President Eisenhower's birth, Columbia has renamed the Conservation Project in honor of his contributions to it. Known from now on as the Eisenhower Center for the Conservation of Human Resources, it will continue this strong record of working to improve the Nation's human resources, as President Eisenhower saw that it could and should do.

This resolution expresses the support of the Senate for the newly changed name and the good work the Eisenhower Center will continue to do as it enters this new phase in its development.●

AMENDMENTS SUBMITTED

OLDER WORKERS BENEFIT PROTECTION ACT

DOLE AMENDMENT NOS. 2674 THROUGH 2676

(Ordered to lie on the table.)

Mr. DOLE submitted three amendments intended to be proposed by him to the reported amendment, as modified, to the bill (S. 1511) to amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes, as follows:

AMENDMENT No. 2674

At the end of the amendment, add the following new title:

TITLE IV—SMALL EMPLOYERS

SEC. 401. SMALL EMPLOYERS.

Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not apply to an employer with fewer than 100 employees.

AMENDMENT NO. 2675

Beginning on page 9 of the amendment, strike line 17 and all that follows through page 11, line 9, and insert the following new section:

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this title shall become effective on the date that is 2 years after the date of enactment of this Act.

(b) STATES AND POLITICAL SUBDIVISIONS.—

(1) APPLICATION.—This subsection shall apply to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law.

AMENDMENT NO. 2676

On page 14 of the committee amendment, between lines 8 and 9, insert the following:

"SPECIAL PROVISION FOR STATES AND LOCAL SUBDIVISIONS REQUIRED TO RAISE TAXES TO COMPLY.

"(1) IN GENERAL.—Nothwithstanding any other provision of this Act or any other provision of law, if any State government or political subdivision of a State must raise taxes to bring one or more of its employee benefit programs into compliance with this Act, this title and the amendments made by this title shall not apply to that program until the date that is four years after the date of enactment of this Act.

"(2) CERTIFICATION BY GOVERNOR OF AFFECTED STATE.—Paragraph (1) shall apply to any employee benefit program there, within six months of the date of enactment of this Act, the Governor of the State having jurisdiction over such program has certified to the Equal Employment Opportunity Commission that the only feasible means for bringing the program into compliance with this Act is through some type of tax increase.

"(3) STUDY OF FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS.—One year from the date of enactment of this Act the Equal Employment Opportunity Commission shall transmit a report to Congress analyzing the fiscal impact of this Act on State and local governments. This study shall identify the type and amount of any tax increase any State or subdivision of a State is required to impose to comply with this Act as well as any other effects of the Act on State and local governments.".

JEFFORDS AMENDMENTS NOS. 2677 THROUGH 2679

(Ordered to lie on the table.)

Mr. JEFFORDS submitted three amendments intended to be proposed by him to the reported amendment, as modified, to the bill S. 1511, supra, as follows:

AMENDMENT NO. 2677

At page 16, line 22—

Delete the period at the end of the line and insert the following: ", except that where all individuals in the same job classification or organizational unit are eligible or selected for the program, the employer need not compile or inform the individual of the information specified herein [i.e., in (f)(1)(H)(ii)].".

AMENDMENT NO. 2678

At page 17, line 13—

Delete all after the word "that" through the end of the sentence on line 18. Thereafter, insert the following: "the requirements set forth in paragraph (1) or (2) have been satisfied.".

AMENDMENT NO. 2679

At page 6, strike all section (2)(A) and insert the following:

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension are deducted from severance pay made available as a result of the contingent event unrelated to age; or

"(ii) the value of any additional pension benefits that are made available, to an individual eligible for an immediate pension, solely as a result of the contingent event unrelated to age are deducted from severance pay made available as a result of the contingent event unrelated to age, provided that the individual may elect to receive either the additional pension benefits or the severance pay.".

PURPOSE

To allow the offset against severance of any pension sweeteners which provide employees with additional benefits beyond those to which they otherwise are entitled under the plan (i.e., eliminating the requirement that the sweetener provide an unreduced pension) and which benefits are available solely as the result of the contingent event unrelated to age, regardless of presence of retiree health benefits. A necessary precondition to the offset is that the employee is provided with the choice between the additional pension benefits or the severance pay.

METZENBAUM AMENDMENT NOS. 2680 THROUGH 2682

(Ordered to lie on the table.)

Mr. METZENBAUM submitted three amendments intended to be proposed by him to the reported amendment, as modified, to the bill S. 1511, supra, as follows:

AMENDMENT NO. 2680

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

"(2)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older individual is no less than that made or incurred on behalf of a younger individual, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the purposes of this Act,

except that no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and

"(3) to discharge or otherwise discipline an individual for good cause.

An employer, employment agency, or labor organization acting under paragraphs (1) or (2) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act.";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibil-

ity for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) in any case in which retiree health benefits as described in clause (i) are provided, the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits paid to the individual that the individual voluntarily elects to receive.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 60 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 2, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, establish new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms

and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination and Employment Act of 1967 (as redesignated by section 103(2) of this Act).

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1) or (2) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

FEDERAL AGENCIES.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer that is a Federal agency, this title and the amendments made by this title shall apply 2 years after the date of enactment of this Act.

(2) FEDERAL AGENCY.—The term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

SEC. 104. STUDY OF COMPLIANCE BY FEDERAL AGENCIES.

(a) IN GENERAL.—The Director of the Office of Personnel Management shall conduct a study of the compliance of Federal employee benefit plans with the requirements of this title and the amendments made by this title.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director shall submit a report to Congress that describes the results of the study conducted under subsection (a). If the Director determines that Federal agencies are not complying with the requirements referred to in subsection (a), the Director shall include in the report a detailed proposal for ensuring the compliance of Federal agencies with the requirements without reducing benefits to any Federal employee or annuitant.

(c) DEFINITION OF FEDERAL AGENCY.—As used in this section, the term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

AMENDMENT No. 2681

Strike all after the first word and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

"(2)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older individual is no less than that made or incurred on behalf of a younger individual, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the purposes of this Act,

except that no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and

"(3) to discharge or otherwise discipline an individual for good cause.

An employer, employment agency, or labor organization acting under paragraphs (1) or (2) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act.";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) in any case in which retiree health benefits as described in clause (i) are provided, the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits paid to the individual that the individual voluntarily elects to receive.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 60 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 2, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, establish new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing inde-

pendent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination and Employment Act of 1967 (as redesignated by section 103(2) of this Act).

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1) or (2) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

AMENDMENT No. 2682

Strike all after the first word in the text proposed to be striken and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

"(2)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older individual is no less than that made or incurred on behalf of a younger individual, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the purposes of this Act,

except that no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and

"(3) to discharge or otherwise discipline an individual for good cause.

An employer, employment agency, or labor organization acting under paragraphs (1) or (2) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act.";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(1) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) in any case in which retiree health benefits as described in clause (i) are provided, the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits paid to the individual that the individual voluntarily elects to receive.".

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 60 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 2, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, establish new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a

separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination and Employment Act of 1967 (as redesignated by section 103(2) of this Act).

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1) or (2) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

FEDERAL AGENCIES.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer that is a Federal agency, this title and the amendments made by this title shall apply 2 years after the date of enactment of this Act.

(2) FEDERAL AGENCY.—The term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

SEC. 106. STUDY OF COMPLIANCE BY FEDERAL AGENCIES.

(a) IN GENERAL.—The Director of the Office of Personnel Management shall conduct a study of the compliance of Federal employee benefit plans with the requirements of this title and the amendments made by this title.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director shall submit a report to Congress that describes the results of the study conducted under subsection (a). If the Director determines that Federal agencies are not complying with the requirements referred to in subsection (a), the Director shall include in the report a detailed proposal for ensuring the compliance of Federal agencies with the requirements without reducing benefits to any Federal employee or annuitant.

(c) DEFINITION OF FEDERAL AGENCY.—As used in this section, the term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

FEDERAL AGENCIES.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer that is a Federal agency, this title and the amendments made by this title shall apply 2 years after the date of enactment of this Act.

(2) FEDERAL AGENCY.—The term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

SEC. 104. STUDY OF COMPLIANCE BY FEDERAL AGENCIES.

(a) IN GENERAL.—The Director of the Office of Personnel Management shall conduct a study of the compliance of Federal employee benefit plans with the requirements of this title and the amendments made by this title.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director shall submit a report to Congress that describes the results of the study conducted under subsection (a). If the Director determines that Federal agencies are not complying with the requirements referred to in subsection (a), the Director shall include in the report a detailed proposal for ensuring the compliance of Federal agencies with the requirements without reducing benefits to any Federal employee or annuitant.

(c) DEFINITION OF FEDERAL AGENCY.—As used in this section, the term "Federal agency" means a Federal department, agency, or unit that is described in section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)).

ROTH AMENDMENT NOS. 2683 AND 2684

(Ordered to lie on the table.)

Mr. ROTH submitted two amendments intended to be proposed by him to the reported amendment, as modified, to the bill S. 1511, supra, as follows:

AMENDMENT No. 2683

SEC. 105. EFFECTIVE DATE.

Title I, section 105(a)(2) would be amended at the end to add:

"'Conduct' does not include payments made after the date of enactment of this Act where such payments are continuations of a payment schedule established for an individual prior to that date."

AMENDEMENT No. 2684

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Title I, section 103 is amended by striking subsection (l)(3) and inserting the following new subsection:

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) to observe the terms of an arrangement—

"(A) under which long-term disability benefits are reduced by—

"(i) any pension benefits for which an employee is eligible and that are not reduced on account of the age of the employee.".

HATCH AMENDMENT NOS. 2685 THROUGH 2704

(Ordered to lie on the table.)

Mr. HATCH submitted 20 amendments intended to be proposed by him to the reported amendment, as modified, to the bill S. 1511, supra, as follows:

AMENDMENT No. 2685

On page 6 of the amendment, strike lines 7 through 12 and insert in lieu thereof the following:

"The value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual eligible for not less than an immediate and unreduced pension,".

AMENDMENT No. 2686

Beginning on page 9 of the amendment, strike line 17 and all that follows through page 11, line 9, and insert the following new section:

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this title shall become effective on the date that is 2 years and one day after the date of enactment of this Act.

(b) STATES AND POLITICAL SUBDIVISIONS.—

(1) APPLICATION.—This subsection shall apply to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 22, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law.

AMENDMENT No. 2687

Beginning on page 9 of the amendment, strike line 17 and all that follows through page 11, line 9, and insert the following new section:

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this title shall become effective on the date that is 2 years and one day after the date of enactment of this Act.

(b) STATES AND POLITICAL SUBDIVISIONS.—

(1) APPLICATION.—This subsection shall apply to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 22, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law.

AMENDMENT No. 2688

On page 8 of the amendment, line 2, before the period, insert the following: ", or at any greater or lesser rate equal to the cost that an employer can demonstrate it has incurred in providing retiree health benefits to any individual".

At page 7, delete subparagraph (D) and redesignate subparagraphs (E) and (F) as (D) and (E) respectively.

AMENDMENT No. 2689

In section 105 of the amendment:

Redesignate subsection (d) as subsection (e).

Insert immediately following subsection (c) the following new subsection (d):

"(d) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of or any benefit payments that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the date of enactment of this Act.".

AMENDMENT No. 2690

On page 14 of the amendment, between lines 8 and 9, insert the following new subsection:

(d) APPLICATION OF STATE AND LOCAL GOVERNMENT PROVISIONS TO PRIVATE EMPLOYERS.—Any special provision applicable to State and local governments under this section may also apply to a private employer, at the discretion of the employer.

Redesignate subsection (d) on page 14 as subsection (e).

AMENDMENT No. 2691

On page 10 of the amendment, line 17, strike "or June 1, 1992, whichever occurs first".

AMENDMENT No. 2692

On page 10 of the amendment, between lines 17 and 18, insert the following:

( ) BENEFITS PROVIDED TO MEMBERS AND NON-MEMBERS.—For the purposes of _____, employee benefits provided pursuant to a plan that covers both employees who are members of a collective bargaining unit and employees who are not members of a collective bargaining unit shall be considered to be maintained pursuant to a collective bargaining agreement it at least 25 percent of the plan participants are members of one or more collective bargaining units to which an applicable collective bargaining agreement applies.

AMENDMENT No. 2693

On page 4 of the amendment, lines 7 and 8, strike "Consistent with the purposes of this Act," and insert "which is not a subterfuge to evade the purpose of this Act,".

AMENDMENT No. 2694

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Benefits Equity Act of 1990".

SEC. 2. FINDINGS.

Congress finds that—

(1) in *Public Employees Retirement System of Ohio v. Betts,* 109 S. Ct. 2854 (1989), the Supreme Court held that the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) has limited application to age discrimination in employee benefits;

(2) prior to the *Betts* decision, the courts and administrative agencies charged with enforcement of such Act had adopted inconsistent and conflicting positions concerning the application of such Act to employee benefits;

(3) these inconsistencies and conflicts led to litigation and uncertainty over the lawfulness of numerous long-standing features of employee benefits arrangements that are designed to meet, in a cost effective manner, the needs of employees at various stages of their lives, including—

(A) arrangements that integrate or coordinate benefits available under one program (such as severance, supplemental unemployment, or disability benefits) with benefits available from other programs (such as pension benefits);

(B) arrangements that integrate or coordinate benefits available from an employer (such as pension benefits) with benefits available from government sources (such as benefits available under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq.) or workers' compensation);

(C) arrangements that provide enhancements to voluntary early retirement benefits; and

(D) arrangements that calculate benefit levels with reference to age by using present value concepts and generally accepted actuarial practices; and

(4) for these reasons, it is necessary to amend such Act to ensure that—

(A) older workers are protected against arbitrary age discrimination in employee benefits;

(B) bona fide employee benefits arrangements are not discouraged or disrupted; and

(C) the effect of such Act on employee benefits is clarified, and consistent application in the future ensured.

SEC. 3. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) in subsection (a)—

(A) by striking "or" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(4) to discriminate against any individual with respect to the employee benefits of the individual, because of the age of the individual: *Provided,* That for income replacement benefits or other welfare benefits, an employer shall not be considered to have discriminated against an individual within each of these two categories of benefits if—

"(A) the amount or cost of the benefits available to the individual for the year is no less than the amount or cost of the benefit or benefits available for the year to similarly situated younger individuals;

"(B) the present value of the benefits available to the individual is no less than the present value of the benefits available to similarly situated younger individuals; or

"(C) the individual has the option of receiving the same benefits as similarly situated younger individuals,

Provided further, That, an employer shall not be considered to have discriminated against an individual with respect to employee benefits by offering supplemental or subsidized early retirement benefits to subgroups of employees through either an ongoing plan or a temporary arrangement, but, in the case of such a plan or arrangement that offers a supplemental benefit (other than an early retirement subsidy or a social security supplement), only if the supplemental benefit does not arbitrarily dis-

criminate based on age or provides, or has provided in the past, a supplemental benefit to each older employee that is at least equal in amount to the supplemental benefit that such plan or arrangement offers to a similarly situated younger employee."; and

(2) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by striking paragraph (2) and inserting the following new paragraphs:

"(2) to observe the terms of a bona fide seniority system, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of the individual;

"(3) to make an age-based variance in employee benefits through the following arrangements—

"(A) an employee benefit arrangement that was permissible under section 1625.10 of title 29, Code of Federal Regulations (as in effect on June 22, 1989);

"(B) an arrangement under which long-term disability benefits are reduced by—

"(i) any person benefits for which an employee is eligible and that are not reduced on account of the age of the employee; or

"(ii) any pension benefits that an employee actually receives;

"(C) an arrangement under which long-term disability benefits are reduced by any pension benefits that the employee is eligible to receive and under which long-term disability benefits are payable for life (or, if earlier, until the termination of the disability); or

"(D) supplemental unemployment benefits that cease not later than when an individual becomes eligible to receive a pension that is not reduced on account of the age of an employee, except that no such age-based variance in employee benefits shall excuse the failure to hire any individual, or require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of the individual; or".

SEC. 4. DEFINITIONS.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsections:

"(l) The term 'cost of the employee benefit or benefits' means the cost attributable to the benefit or benefits as determined in accordance with professionally recognized actuarial principles.

"(m) The term 'employee benefit' or 'employee benefits' includes the total remuneration provided pursuant to—

"(1) one or more pension, severance, supplemental unemployment benefit, disability, or health insurance plans or programs, or other employee benefit plan or plans (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

"(2) special layoff, disability, or plant closure arrangements, such as severance payments and early retirement enhancements; or

"(3) one or more government-sponsored benefit programs, such as programs established under the Social Security Act (42 U.S.C. 301 et seq.), workers' compensation, or State or local government retirement programs.

"(n) The term 'government' means the government the United States or a State or political subdivision thereof, or any agency or instrumentality thereof.

"(o) The term 'income replacement benefits' means employee benefits that take the place of wages, such as pension, disability, severance, supplemental unemployment, or social security benefits, social security supplements, and workers compensation.

"(p) The term 'other welfare benefits' means benefits provided pursuant to a welfare plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)) and similar government-sponsored benefits, other than income replacement benefits.

"(q) The term 'present value' means the current equivalent value of any stream of current or future payments or receipts, discounted on the basis of assumptions consistent with generally accepted practice in the actuarial profession.

"(r) The term 'similarly situated individuals' means individuals similar in all other relevant aspects of the employment relationship.".

SEC. 5. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this Act, and the amendments made by this Act, only after coordination with the Secretary of the Treasury and the Secretary of Labor.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act and the amendments made by this Act shall apply only to conduct occurring more than 180 days after the date of enactment of this Act.

(b) COLLECTIVE BARGAINING AGREEMENTS.—

(1) IN GENERAL.—In the case of employee benefits that are provided pursuant to one or more collective bargaining agreements, this Act and the amendments made by this Act shall not apply to conduct occurring before the earlier of—

(A) the date of expiration of the last to expire of the collective bargaining agreements pursuant to which the benefits are provided and that are in effect on the date of enactment of this Act; or

(B) the date that is 24 months after the date of enactment of this Act.

(2) BENEFITS PROVIDED TO MEMBERS AND NON-MEMBERS.—For the purposes of this subsection, employee benefits provided pursuant to a plan that covers both employees who are members of a collective bargaining unit and employees who are not members of a collective bargaining unit shall be considered to be maintained pursuant to a collective bargaining agreement if at least 25 percent of the plan participants are members of one or more collective bargaining units to which an applicable collective bargaining agreement applies.

(c) STATE EMPLOYEE BENEFIT ARRANGEMENTS.—

(1) IN GENERAL.—In case of employee benefit arrangements in effect under State law on the date of enactment of this Act, except as provided in paragraph (2), this Act and the amendments made by this Act shall apply beginning on the earlier of—

(A) the adjournment sine die of second subsequent session of the appropriate State legislature; or

(B) the date that is 2 years after the date of enactment of this Act.

(2) DISABILITY BENEFITS.—In the case of any change required by this Act or an amendment made by this Act in a State or local government plan that provides disability or disability benefits, the change shall apply only to an individual hired after the change becomes effective.

(d) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any provision of this section, on and after the effective date of this Act and the amendments made by this Act (as determined in accordance with subsections (a), (b), and (c)), this Act and the amendments made by this Act shall not apply to a series of benefit payments that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date.

AMENDMENT NO. 2695

At the appropriate place in the amendment, insert the following: "Nothing herein shall be construed as requiring that Medicare-eligible retirees are entitled to the same benefits as non-Medicare eligible retirees.".

AMENDMENT NO. 2696

On page 4 of the amendment, lines one and 3, strike the word "individual" and insert the word "worker" in lieu thereof.

AMENDMENT NO. 2697

At the appropriate place insert the following:

( ) SPECIAL PROVISION FOR STATES AND LOCAL SUBDIVISIONS REQUIRED TO RAISE TAXES TO COMPLY.

(1) IN GENERAL.—Notwithstanding any other provision of this Act or any other provision of law, if any State government or political subdivision of a State must raise taxes to bring one or more of its employee benefit programs into compliance with this Act, this title and the amendments made by this title shall not apply to that program until the date that is four years after the date of enactment of this Act.

(2) CERTIFICATION BY GOVERNOR OF AFFECTED STATE.—Paragraph (1) shall apply to any employee benefit program where, within six months of the date of enactment of this Act, the Governor of the State having jurisdiction over such program has certified to the Equal Employment Opportunity Commission that the only feasible means for bringing the program into compliance with this Act is through some type of tax increase.

(3) STUDY OF FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS.—One year from the date of enactment of this Act the Equal Employment Opportunity Commission shall transmit a report to Congress analyzing the fiscal impact of this Act on state and local governments. This study shall identify the type and amount of any tax increase any state or subdivision of a state is required to impose to comply with this Act as well as any other effects of the Act on State and local governments.

AMENDMENT NO. 2698

On page , add the following text to section 4(f) of the amendment:

"(2)(C) to observe the terms of a bona fide employee benefit plan where death benefits payable on behalf of a deceased retired employee are less than the death benefits of a deceased employee who has not retired;

"(4) to provide benefit improvements to current employees without extending them on an equal or cost equivalent basis to previously retired employees;

"(5) to observe the terms of a retiree health benefits plan which assumes that its eligible retirees have enrolled in Medicare, Part B and does not pay for benefits that would be paid under the Part B coverage,

provided that the plan must provide for the payment of the eligible retirees' premiums for part B coverage."

AMENDMENT No. 2699

On page 5, add the following between lines 13 and 14: "the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits, including a retirement age that may vary with service credit; or".

AMENDMENT No. 2700

On page 12, line 23, after the period, add the following sentence: "The election of coverage under the new disability benefits shall be irrevocable.".

AMENDMENT No. 2701

On page 5, strike paragraph (k).

AMENDMENT No. 2702

On page 9, line 15; strike the word "consultation" and substitute in lieu thereof the word "coordination".

AMENDMENT No. 2703

On page 14, add the following new subparagraph before paragraph (d):

(D) EMPLOYEE.—The term "employee" means, with respect to the election provided in paragraph (2), only employees in active service as of the

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AMENDMENT No. 2704

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

TITLE I—OLDER WORKERS BENEFIT PROTECTION

SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.".

SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the purpose of prohibiting arbitrary age discrimination in employment,

except that no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and except that nothing in this bill shall be construed as requiring that Medicare-eligible retirees are entitled to the same benefits, after taking into account Medicare benefits, as non-Medicare eligible retirees;

An employer, employment agency, or labor organization acting under paragraph (1) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act.";

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (A) paid to

the individual that the individual voluntarily elects to receive;

(B) for which an employee is eligible and that are not reduced on account of the age of the employee; or (C) that are paid pursuant to Internal Revenue Code Section 401(a)(9).

SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 180 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

(c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, establish new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(d) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any provision of this section, on and after the effective date of this title (as determined in accordance with subsections (a), (b), and (c) this title and the amendments made by this title shall not apply to any benefit payments that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date.

(e) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination and Employment Act of 1967 (as redesignated by section 103(2) of this Act).

TITLE II—WAIVER OF RIGHTS OR CLAIMS

SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1)(a-b) or (2)(a-e) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right

of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.".

SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) RULE ON WAIVERS.—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

MOTOR VEHICLE FUEL EFFICIENCY ACT

LEVIN AMENDMENT NOS. 2705 THROUGH 2709

(Ordered to lie on the table.)

Mr. LEVIN submitted four amendments intended to be proposed by him to the bill (S. 1224) to amend the Motor Vehicle Information and Cost Savings Act to require new standards for corporate average fuel economy, and for other purposes, as follows:

AMENDMENT No. 2705

On page 27, line 11, strike out the quotation marks and the last period.

On page 27, between lines 11 and 12, insert the following:

"AUTOMOBILE SAFETY

"SEC. 517. (a) Within 30 days after the date of enactment of this section, the Secretary, in consultation with the Administrator of the National Highway Traffic Safety Administration, shall commence a comprehensive study of the effects of implementing the average fuel economy standards in sections 514 and 515 on automobile safety. The study required by this section shall be completed by no later than January 1, 1992.

"(b) If the Secretary determines that implementation of the average fuel economy standards in sections 514 and 515 is likely to have a negative impact on automobile safety, he shall modify such standards to reflect the maximum average fuel economy levels that the Secretary determines can be achieved without a negative impact on automobile safety.".

AMENDMENT No. 2706

On page 27, line 11, strike out the quotation marks and the last period.

On page 27, between lines 11 and 12, insert the following:

"IMPACT ON VEHICLE SIZE AND WEIGHT

"SEC. 517. (a) Within 30 days after the date of enactment of this section, the Secretary, in consultation with the Administrator of the National Highway Traffic Safety Administration and the Administrator of the Environmental Protection Agency, shall commence a comprehensive study of the effects of implementing the average fuel economy standards in sections 514 and 515 on the average size and weight of covered vehicles. The study required by this section shall be completed by no later than January 1, 1992.

"(b) If the Secretary determines that implementation of the average fuel economy standards in sections 514 and 515 cannot be met without reductions to the average size and weight of covered vehicles, he shall modify such standards to reflect the maximum average fuel economy levels that the Secretary determines can be achieved without such reductions in vehicle size and weight.".

AMENDMENT No. 1707

On page 25, line 2, strike out "Any time after the beginning of fiscal year 1995, the" and insert "The".

AMENDMENT No. 2708

On page 25, lines 4 and 5, strike out "for model year 2001 and thereafter".

AMENDMENT No. 2709

On page 26, line 1, beginning with the comma, strike out all through "1988" on line 5.

NOTICES OF HEARINGS

SPECIAL COMMITTEE ON AGING

Mr. PRYOR. Mr. President, I would like to announce for the public that the Senate Special Committee on Aging has scheduled a hearing entitled "Profiles in Aging America: Meeting the Health Care Needs of the Nation's Black Elderly."

The hearing will take place on Friday, September 28, 1990, beginning at 9:30 a.m. in Room 216 of the Hart Senate Office Building.

For further information, please contact Portia Mittelman, Staff Director at (202) 224-5364.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce that in addition to the other measures scheduled to be considered at the previously announced September 27 hearing of the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources, the subcommittee will receive testimony on S. 3048, a bill to amend the Illinois and Michigan Canal National Heritage Corridor Act of 1984 to extend the boundaries of the corridor. The hearing will begin at 2 p.m. in room 366 of the Dirksen Senate Office Building.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 19, at 2 p.m. to hold a closed hearing (which will open) regarding the Post-United Nations Agreement: Prospects for Peace in Cambodia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 19, 1990, at 10 a.m. to hold a hearing on the scope and effects of foreign influence on U.S. policy decisions.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing and Urban Affairs be allowed to meet during the session of the Senate on Wednesday, September 19, 1990, at 9 a.m. to conduct a hearing on the condition of housing in Hawaii and at 10 a.m. to conduct a roundtable hearing on the Real Estate Settlement Procedures Act [RESPA].

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on September 19, 1990, at 10 a.m. to hold a hearing on the nomination of David H. Souter, to be associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 2 p.m. Wednesday, September 19, 1990, for a hearing to receive testimony concerning S. 2674, to provide for the reestablishment of the gray wolf in Yellowstone National Park and the Central Idaho Wilderness Areas.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, September 19, 1990, at 9:30 a.m. The committee will hold a hearing to examine various tax issues and their impact on small business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SUPERFUND, OCEAN AND WATER PROTECTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Ocean and Water Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, September 19, beginning at 10 a.m., to conduct a hearing on the status of the Superfund Cleanup Contracting Program and its relationship to surety bonding issues.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1991

The text of H.R. 5311, making appropriations for the District of Columbia, and for other purposes, as passed by the Senate on September 18, 1990, is as follows:

H.R. 5311

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia for the fiscal year ending September 30, 1991, and for other purposes, namely:

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1991, $430,500,000: *Provided,* That none of these funds shall be made available to the District of Columbia until the number of full-time uniformed officers in permanent positions in the Metropolitan Police Department is at least 4,430, excluding any such officer appointed after August 19, 1982, under qualification standards other than those in effect on such date.

FEDERAL CONTRIBUTION TO RETIREMENT FUNDS

For the Federal contribution to the Police Officers and Fire Fighters', Teachers', and Judges' Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), $52,070,000.

TRANSITIONAL PAYMENT FOR SAINT ELIZABETHS HOSPITAL

For a Federal contribution to the District of Columbia, as authorized by the Saint Elizabeths Hospital and District of Columbia Mental Hospital Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), $10,000,000.

CRIMINAL JUSTICE INITIATIVE

The $70,300,000 previously appropriated under "Criminal Justice Initiative" for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1989, and September 30, 1991, for the design and construction of a prison within the District of Columbia shall remain in the United States Treasury and shall be transferred to the District of Columbia government only to the extent that outstanding obligations are due and payable to entities other than agencies and organizations of the District of Columbia government, and payments to such agencies and organizations may be made only in reimbursement for amounts actually expended in furtherance of the design and construction of the prison: *Provided,* That construction may not commence unless access and parking for construction vehicles are provided solely at a location other than city streets: *Provided further,* That District officials meet monthly with neighborhood representatives to inform them of current plans and discuss problems: *Provided further,* That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding the new prison, can promptly obtain information from District officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further,* That the District of Columbia shall also take steps to publicize the availability of that service among the residents of the area surrounding the new prison.

DRUG EMERGENCY

For a Federal contribution to the District of Columbia, $26,708,000, to remain available until expended, to close open air drug markets, increase police visibility, and provide for speedier court processing of drug-related violent cases.

COMMISSION ON BUDGET AND FINANCIAL PRIORITIES

For payment to the District of Columbia for expenses incurred in fiscal year 1990 and fiscal year 1991 by the Commission on Budget and Financial Priorities, up to $1,000,000: *Provided,* That such funds shall become available only when equally matched with District funds.

DEPARTMENT OF ADMINISTRATIVE SERVICES

For a Federal contribution to the District of Columbia for the Department of Administrative Services, $1,000,000.

BOARD OF EDUCATION

For a Federal contribution to the District of Columbia, $15,080,000, of which $10,000,000 shall be for maintenance improvements and emergency repairs to public school facilities, $1,000,000 shall be for renovations to public school athletic and recreational grounds and facilities, $80,000 shall be for the D.C. Schools Project for immigrant children, $1,000,000 shall be for expansion of the early childhood program, and $3,000,000 shall be for teacher pay raises.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

For a Federal contribution to the District of Columbia for the After School Kids Program, $160,000; for the Social Services Division, $860,000; and, for counsel for Child Abuse and Neglect Program fees, $400,000.

DISTRICT OF COLUMBIA GENERAL HOSPITAL

For a Federal contribution to the District of Columbia General Hospital, $5,000,000.

DEPARTMENT OF HUMAN SERVICES

For a Federal contribution to the District of Columbia, $2,850,000, of which $350,000 shall be to develop a program for boarder babies and children of substance abusers, $500,000 shall be to develop a residential aftercare program for pregnant substance abusers, $1,500,000 shall be for outpatient aftercare for pregnant and the general recovering addict population, and $500,000 shall be for a program for early detection of breast and cervical cancer to be conducted by a independent organization or institution of national prominence.

CHILDREN'S NATIONAL MEDICAL CENTER

For a Federal contribution to the District of Columbia for payment to the Children's National Medical Center for a cost-shared National Child Protection Center, $4,000,000.

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, $113,879,000: *Provided,* That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, and $2,500 for the City Administrator shall be available from this appropriation for expenditures for official purposes: *Provided further,* That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further,* That notwithstanding any other provision of law, there is hereby appropriated $9,077,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, of which $818,000 shall be derived from the general fund and not to exceed $8,259,000 shall be derived from the earnings of the applicable retirement funds: *Provided further,* That the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further,* That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report: *Provided further,* That of the Indirect Cost Allocation distributed by the District government, no less than $500,000 shall be provided to the Department of Administrative Services and no less than $500,000 shall be provided to the Office of Personnel.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $135,541,000: *Provided,* That the District of Columbia Housing Finance Agency, established by section 201 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Code, sec. 45-2111), based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Finance Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated administrative costs plus interest at a rate of four percent per annum for a term of 15 years, with a deferral of payments for the first three years: *Provided further,* That notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Finance Agency and shall be repaid to the District of Columbia government only from available operating revenues of the Finance Agency that are in excess of the amounts required for debt service, re-

serve funds, and operating expenses: *Provided further,* That upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia: *Provided further,* That up to $275,000 within the 15 percent set-aside for special programs within the Tenant Assistance Program shall be targeted for the single-room occupancy initiative.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, including purchase of 135 passenger-carrying vehicles for replacement only, including 130 for police-type use and five for fire-type use, without regard to the general purchase price limitation for the current fiscal year, $920,583,000: *Provided,* That the Metropolitan Police Department is authorized to replace not to exceed 25 passenger-carrying vehicles and the Fire Department of the District of Columbia is authorized to replace not to exceed five passenger-carrying vehicles annually whenever the cost of repair to any damaged vehicle exceeds three-fourths of the cost of the replacement: *Provided further,* That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further,* That the Metropolitan Police Department shall provide quarterly reports to the Committees on Appropriations of the House and Senate on efforts to increase efficiency and improve the professionalism in the department: *Provided further,* That notwithstanding any other provision of law, or Mayor's order 86-45, issued March 18, 1986, the Metropolitan Police Department's delegated small purchase authority shall be $500,000: *Provided further,* That funds appropriated for expenses under the District of Columbia Criminal Justice Act, approved September 3, 1974 (88 Stat. 1090; Public Law 93-412; D.C. Code, sec. 11-2601 et seq.), for the fiscal year ending September 30, 1991, shall be available for obligations incurred under that Act in each fiscal year since inception in the fiscal year ending September 30, 1975: *Provided further,* That funds appropriated for expenses under the District of Columbia Neglect Representation Equity Act of 1984, effective March 13, 1985 (D.C. Law 5-129; D.C. Code, sec. 16-2304), for the fiscal year ending September 30, 1991, shall be available for obligations incurred under that Act in each fiscal year since inception in the fiscal year ending September 30, 1985: *Provided further,* That funds appropriated for expenses under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986, effective September 30, 1989 (D.C. Law 6-204; D.C. Code, sec. 21-2060), for the fiscal year ending September 30, 1991, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1989: *Provided further,* That $50,000 of any appropriation available to the District of Columbia may be used to match financial contributions from the United States Department of Defense to the District of Columbia Office of Emergency Preparedness for the purchase of civil defense equipment and supplies approved by the Department of Defense, when authorized by the Mayor: *Provided further,* That not to exceed $1,500 for the Chief Judge of the District of Columbia Court of Appeals, $1,500 for the Chief Judge of the Superior Court of the District of Columbia, and $1,500 for the Executive Officer of the District of Columbia Courts shall be available from this appropriation for official purposes: *Provided further,* That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding Lorton prison in Fairfax County, Virginia, can promptly obtain information from District of Columbia government officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further,* That the District of Columbia government shall also take steps to publicize the availability of the 24-hour telephone information service among the residents of the area surrounding the Lorton prison: *Provided further,* That not to exceed $100,000 of this appropriation shall be used to reimburse Fairfax County, Virginia, and Prince William County, Virginia, for expenses incurred by the counties during the fiscal year ending September 30, 1991, in relation to the Lorton prison complex: *Provided further,* That such reimbursements shall be paid in all instances in which the District requests the counties to provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison: *Provided further,* That none of the funds appropriated by this Act may be used to implement any plan that includes the closing of Engine Company 3, located at 439 New Jersey Avenue, Northwest: *Provided further,* That at least 21 ambulances shall be maintained on duty 24 hours per day, 365 days a year: *Provided further,* That the staffing levels of each two-piece engine company within the Fire Department shall be maintained in accordance with the provisions of article III, section 18 of the Fire Department Rules and Regulations as then in effect: *Provided further,* That none of the funds provided in this Act may be used to implement any staffing plan for the District of Columbia Fire Department that includes the elimination of any positions for Administrative Assistants to the Battalion Fire Chiefs of the Firefighting Division of the Department: *Provided further,* That none of the funds provided in this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as published in the District of Columbia Register for July 25, 1986 (33 DCR 4453a): *Provided further,* That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further,* That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and the availability of the sums shall be deemed as constituting payment in advance for the emergency services involved: *Provided further,* That $17,630,000 for the Metropolitan Police Department and $2,600,000 for the District of Columbia Superior Court shall remain available until expended.

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national defense education programs, $738,240,000, to be allocated as follows: $530,764,000 for the public schools of the District of Columbia; $21,000,000 for pay-as-you-go capital projects for public schools; $81,200,000 for the District of Columbia Teachers' Retirement Fund; $76,913,000 for the University of the District of Columbia; $20,378,000 for the Public Library; $3,527,000 for the Commission on the Arts and Humanities; $3,940,000 for the District of Columbia School of Law; and $518,000 for the Education Licensure Commission: *Provided,* That the public schools of the District of Columbia are authorized to accept not to exceed 31 motor vehicles for exclusive use in the driver education program: *Provided further,* That the amount allocated under this title for the public schools shall be increased, dollar for dollar up to $36,400,000, by the amount the annual Federal payment for fiscal year 1991 is increased above the current $430,500,000 Federal payment in fiscal year 1990: *Provided further,* That not to exceed $2,500 for the Superintendent of Schools, $2,500 for the President of the University of the District of Columbia, and $2,000 for the Public Librarian shall be available from this appropriation for expenditures for official purposes: *Provided further,* That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1991, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area: *Provided further,* That under this heading for the fiscal year ending September 30, 1991, the Public Library shall be considered a statutorily independent agency and thus shall be exempted from any and all across-the-board rescissions that may be applied to agencies under the control of the Mayor.

HUMAN SUPPORT SERVICES

Human support services, $876,240,000: *Provided,* That $20,848,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation: *Provided further,* That of the funds provided for the D.C. General Hospital subsidy, $646,000 shall be used to provide health care to homeless persons: *Provided further,* That of the funds provided for the provision of emergency shelter services in the Department of Human Services, three-fourths of the funds shall be available solely for allocation to a legally constituted private nonprofit organization in the District as defined in section 411(5) of the Stewart B. McKinney Homeless Act, approved July 22, 1987 (101 Stat. 495; 42 U.S.C. 11371(5)): *Provided further,* That the District shall not provide free government services such as water, sewer, solid waste disposal or collection, utilities, maintenance, repairs, or similar services, if the District would not be qualified to receive reimbursement pursuant to the McKinney Act (42 U.S.C. 11301 et. seq.).

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, $229,482,000: *Provided,* That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business: *Provided further,* That any unobligated funds from the school transit subsidy shall be applied solely to the repayment of the general fund accumulated deficit.

WASHINGTON CONVENTION CENTER FUND

For the Washington Convention Center Fund, $8,383,000: *Provided,* That the Convention Center Board of Directors, established by section 3 of the Washington Convention Center Management Act of 1979, effective November 3, 1979 (D.C. Law 3-36; D.C. Code, sec. 9-602), shall reimburse the Auditor of the District of Columbia for all reasonable costs for performance of the annual Convention Center audit.

REPAYMENT OF LOANS AND INTEREST

For reimbursement to the United States of funds loaned in compliance with An Act to provide for the establishment of a modern, adequate, and efficient hospital center in the District of Columbia, approved August 7, 1946 (60 Stat. 896; Public Law 79-648); section 1 of An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, sec. 9-219); section 4 of An Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211; Public Law 86-515); section 723 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 821; Public Law 93-198; D.C. Code, sec. 47-321, space note); and section 743(f) of the District of Columbia Self-Government and Governmental Reorganization Act Amendments, approved October 13, 1977 (91 Stat. 1156; Public Law 95-131; D.C. Code, sec. 9-219, note), including interest as required thereby, $252,740,000.

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of reducing the $213,403,000 general fund accumulated deficit as of September 30, 1989, $20,000,000, of which not less than $18,287,000 shall be funded and apportioned by the Mayor from amounts otherwise available to the District of Columbia government (including amounts appropriated by this Act or revenues otherwise available, or both): *Provided,* That if the Federal payment to the District of Columbia for fiscal year 1991 is reduced pursuant to an order issued by the President under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177, approved December 12, 1985), as amended, the percentage (if any) by which the $20,000,000 set aside for repayment of the general fund accumulated deficit under this appropriation title is reduced as a consequence shall not exceed the percentage by which the Federal payment is reduced pursuant to such order: *Provided further,* That all net revenue the District of Columbia government may collect as a result of the District of Columbia government's pending appeal in the consolidated case of U.S. Sprint Communications, et al. v. District of Columbia et al., CA 10080-87 (court order filed November 14, 1988), shall be applied solely to the repayment of the general fund accumulated deficit.

SHORT-TERM BORROWINGS

For the purpose of funding interest related to borrowing funds for short-term cash needs, $13,028,000.

OPTICAL AND DENTAL BENEFITS

For optical and dental costs for nonunion employees, $3,112,000.

SUPPLY, ENERGY, AND EQUIPMENT ADJUSTMENT

The Mayor shall reduce authorized supply, energy, and equipment appropriations and expenditures within object class 20 (supplies), 30a (energy), and 70 (equipment) in the amount of $10,000,000, within one or several of the various appropriation headings in this Act.

PERSONAL SERVICES ADJUSTMENT

The Mayor shall reduce appropriations and expenditures for personal services within object classes 11, 12, 13, and 14 in the amount of $10,000,000, within one or several of the various appropriation headings in this Act.

CAPITAL OUTLAY

For construction projects, $323,322,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, secs. 43-1512 through 43-1519); the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; Public Law 83-364); an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, secs. 9-219 and 47-3402); section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457); including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: *Provided,* That $15,962,000 shall be available for project management and $17,521,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor: *Provided further,* That funds for use by each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further,* That $21,000,000 for the public school system, $392,000 for the Department of Recreation and Parks, and $2,208,000 for the Department of Public Works for pay-as-you-go capital projects shall be financed from general fund operating revenues: *Provided further,* That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: *Provided further,* That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1992, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1992: *Provided further,* That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

WATER AND SEWER ENTERPRISE FUND

For the Water and Sewer Enterprise Fund, $226,209,000, of which $36,608,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, $28,730,000, as authorized by An Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 stat. 244; Public Law 58-140; D.C. Code, sec. 43-1512 et seq.): *Provided,* That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: *Provided further,* That $39,609,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriations Act for the fiscal year ending September 30, 1982, approved December 4, 1981 (95 Stat. 1174, 1175; Public Law 97-91), as amended, for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Code, secs. 2-2501 et seq. and 22-1516 et seq.), $8,600,000, to be derived from non-Federal District of Columbia revenues: *Provided,* That the District of Columbia shall identify the sources of funding for this appropriation title from the District's own locally-generated revenues: *Provided further,* That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

CABLE TELEVISION ENTERPRISE FUND

For the Cable Television Enterprise Fund, established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 5-36; D.C. Code, sec. 43-1801 et seq.), $1,700,000.

GENERAL PROVISIONS

SEC. 101. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.

SEC. 102. Except as otherwise provided in this Act, all vouchers covering expenditures of appropriations contained in this Act shall be audited before payment by the designated certifying official and the vouchers as approved shall be paid by checks issued by the designated disbursing official.

SEC. 103. Whenever in this Act, an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said pur-

pose or object rather than an amount set apart exclusively therefor, except for those funds and programs for the Metropolitan Police Department under the heading "Public Safety and Justice" which shall be considered as the amounts set apart exclusively for and shall be expended solely by that Department; and the appropriation under the heading "Repayment of General Fund Deficit" which shall be considered as the amount set apart exclusively for and shall be expended solely for that purpose.

SEC. 104. Appropriations in this Act shall be available, when authorized by the Mayor, for allowances for privately owned automobiles and motorcycles used for the performance of official duties at rates established by the Mayor: *Provided,* That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations).

SEC. 105. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided,* That the Council of the District of Columbia and the District of Columbia Courts may expend such funds without authorization by the Mayor.

SEC. 106. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments that have been entered against the District of Columbia government: *Provided,* That nothing contained in this section shall be construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947, approved March 31, 1956 (70 Stat. 78; Public Law 84-460; D.C. Code, sec. 47-1812.11(c)(3)).

SEC. 107. Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of section 544 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code, sec. 3-205.44), and for the non-Federal share of funds necessary to qualify for Federal assistance under the Juvenile Delinquency Prevention and Control Act of 1968, approved July 31, 1968 (82 Stat. 462; Public Law 90-445; 42 U.S.C. 3801 et seq.).

SEC. 108. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 109. Not to exceed 4½ per centum of the total of all funds appropriated by this Act for personnel compensation may be used to pay the cost of overtime or temporary positions.

SEC. 110. Appropriations in this Act shall not be available, during the fiscal year ending September 30, 1991, for the compensation of any person appointed to a permanent position in the District of Columbia government during any month in which the number of employees exceeds 39,262.

SEC. 111. SOLID WASTE DISPOSAL.

The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) is amended by adding at the end of subtitle D the following:

"SEC. 4011. (a) AUTHORIZATION OF STATES TO REGULATE SOLID WASTE IN INTERSTATE COMMERCE.—(1) Each State is authorized to enact and enforce laws imposing and collecting fees or other charges in connection with the treatment and disposal within such State of solid waste generated in another State. Any State imposing and collecting any such fee or charge may, in connection therewith, differentiate between two or more States in which solid waste is generated, and may differentiate between any such State of origin and the fees or charges which it enforces and collects, if any, in connection with the treatment and disposal of waste generated within its geographical boundaries.

"(2) On and after the submission to the Administrator of the Environmental Protection Agency of a certification in accordance with paragraphs (3) and (4), each State is authorized to enact and enforce laws regulating the treatment and disposal of solid waste within such State, including laws imposing a ban on the importing into such State or any part thereof, of solid waste for its treatment or disposal, or laws otherwise regulating the importing into such State of solid waste for its treatment or disposal.

"(3) Any State, either directly or through regional or local planning units as may be established under section 4002(a)(1) of this Act, which has adopted a 20-year solid waste management plan may submit a statement to the administrator certifying the solid waste treatment and disposal capacity of such State pursuant to paragraph (4). The solid waste management plan shall include, at a minimum the following:

"(A) the amount of municipal and commercial solid waste by waste type, and waste residuals, which are reasonably expected to be generated within the State or accepted for treatment or disposal from another State during the ensuing 20-year period;

"(B) a statement of the volumes of solid waste expected to be reduced by the State submitting such plan through source reduction and recycling;

"(C) the State's existing capacity to manage such amount of waste by treatment or disposal facilities which meet existing environmental standards; and

"(D) the methods by which the State plans to have new capacity available by its planning dates.

"(4) The Governor of each State which has adopted a 20-year management plan pursuant to paragraph (3) of this section, may certify to the Administrator that such State, based on its plan, or on agreements made with any State or States, has identified adequate capacity to manage all solid waste generated in that State with the plan, and received pursuant to any such agreement, for the next following 60-month period.

"(b) LIMITATION.—Nothing in this section shall apply to—

"(1) any waste identified or listed as hazardous waste by the Administrator pursuant to section 3001 of this Act (42 U.S.C. 6921);

"(2) any solid waste, hazardous waste, hazardous substance, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9604 and 9606, respectively) or a corrective action taken under this Act;

"(3) any hazardous chemical substance or mixture regulated under section 6(e) of the Toxic Substance Control Act (15 U.S.C. 2605(e));

"(4) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or otherwise diverted from solid waste, and that has been transported into such State for the purposes of recycling or reclamation;

"(5) any nonhazardous solid waste produced by an industry that is transported for the purpose of treatment, storage, or disposal to a facility owned or operated by the original generator of the waste.

"(c) INTERSTATE COMPACTS.—The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for cooperative efforts and mutual assistance for the management of solid waste, and the approval of Congress is given to any such agreement or compact so entered into.

"(d) EPA AUTHORITY.—The Administrator of the Environmental Protection Agency shall have the authority to propose and promulgate regulations exempting waste types or recycling practices from the authority granted in this section, if the Administrator determines that such action promotes the development of an interstate market for recyclable materials or is necessary to promote environmentally sound waste disposal practices. Any person may petition the Administrator to propose such regulations and the Administrator shall solicit and consider public comments before making any final determination under this subsection.".

SEC. 112. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during non-school hours.

SEC. 113. The annual budget for the District of Columbia government for the fiscal year ending September 30, 1992, shall be transmitted to the Congress no later than April 15, 1991.

SEC. 114. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on General Services, Federalism, and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 115. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making payments authorized by the District of Columbia Revenue Recovery Act of 1977, effective September 23, 1977 (D.C. Law 2-20; D.C. Code, sec. 47-421 et seq.).

SEC. 116. None of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

SEC. 117. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

SEC. 118. None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health serv-

ice. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

SEC. 119. At the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings: *Provided,* That within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

SEC. 120. The Mayor shall not borrow any funds for capital projects unless he has obtained prior approval from the Council of the District of Columbia, by resolution, identifying the projects and amounts to be financed with such borrowings.

SEC. 121. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the District of Columbia government.

SEC. 122. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

SEC. 123. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443), which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec. 47-361 et seq.).

SEC. 124. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

SEC. 125. None of the Federal funds provided in this Act shall be obligated or expended to procure passenger automobiles as defined in the Automobile Fuel Efficiency Act of 1980, approved October 10, 1980 (94 Stat. 1824; Public Law 96-425; 15 U.S.C. 2001(2)), with an Environmental Protection Agency estimated miles per gallon average of less than 22 miles per gallon: *Provided,* That this section shall not apply to security, emergency rescue, or armored vehicles.

SEC. 126. (a) Notwithstanding section 422(7) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(7)), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. 5315.

(b) For purposes of applying any provision of law limiting the availability of funds for payment of salary or pay in any fiscal year, the highest rate of pay established by the Mayor under subsection (a) of this section for any position for any period during the last quarter of calendar year 1990 shall be deemed to be the rate of pay payable for that position for September 30, 1990.

(c) Notwithstanding section 4(a) of the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 793; Public Law 79-592; D.C. Code, sec. 5-803(a)), the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

SEC. 127. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided,* That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5 of the United States Code.

SEC. 128. The Director of the Department of Administrative Services may pay rentals and repair, alter, and improve rented premises, without regard to the provisions of section 322 of the Economy Act of 1932 (Public Law 72-212; 40 U.S.C. 278a), upon a determination by the Director, that by reason of circumstances set forth in such determination, the payment of these rents and the execution of this work, without reference to the limitations of section 322, is advantageous to the District in terms of economy, efficiency, and the District's best interest.

SEC. 129. No later than 30 days after the end of the first quarter of the fiscal year ending September 30, 1991, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1991 revenue estimates as of the end of the first quarter of fiscal year 1991. These estimates shall be used in the budget request for the fiscal year ending September 30, 1992. The officially revised estimates at midyear shall be used for the midyear report.

SEC. 130. Section 466(b) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 806; Public Law 93-198; D.C. Code, sec. 47-326), as amended, is amended by striking out "sold before October 1, 1990" and inserting in lieu thereof "sold before October 1, 1991".

SEC. 131. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code, sec. 1-1183.3), except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

SEC. 132. For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, approved December 12, 1985 (99 Stat. 1037; Public Law 99-177), as amended, the term "program, project, and activity" shall be synonymous with and refer specifically to each account appropriating Federal funds in this Act, and any sequestration order shall be applied to each of the accounts rather than to the aggregate total of those accounts: *Provided,* That sequestration orders shall not be applied to any account that is specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

SEC. 133. In the event a sequestration order is issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended, after the amounts appropriated to the District of Columbia for the fiscal year involved have been paid to the District of Columbia, the Mayor of the District of Columbia shall pay to the Secretary of the Treasury, within 15 days after receipt of a request therefor from the Secretary of the Treasury, such amounts as are sequestered by the order: *Provided,* That the sequestration percentage specified in the order shall be applied proportionately to each of the Federal appropriation accounts in this Act that are not specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

SEC. 134. Section 133(e) of the District of Columbia Appropriations Act, 1990 is amended by striking "December 31, 1990" and inserting "December 31, 1991".

SEC. 135. Such sums as may be necessary for fiscal year 1991 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 136. For the fiscal year ending September 30, 1991, the District of Columbia shall pay interest on its quarterly payments to the United States that are made more than 60 days from the date of receipt of an itemized statement from the Federal Bureau of Prisons of amounts due for housing District of Columbia convicts in Federal penitentiaries for the preceding quarter.

SEC. 137. The proviso under the heading "Public Works" in the Dire Emergency Supplemental Appropriation for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990, approved May 25, 1990 (Public Law 101-302; 104 Stat. 241), shall remain in effect until September 30, 1991.

SEC. 138. None of the funds appropriated in this or any other Act be used for lobbying expenses related to District of Columbia Statehood or for "shadow representation."

SEC. 139. (a) Enhanced Penalties for Use of a Firearm During Commission of a Crime of Violence or Drug Trafficking Crime.—The Act of July 8, 1932 (47 Stat. 650, chapter 465) is amended by inserting after section 2 the following new section:

"SEC. 2a. (a) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device)—

"(1) possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for not less than 10 years without release;

"(2) discharges a firearm with intent to injure another person, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for not less than 20 years without release; or

"(3) possesses a firearm that is a machinegun, or is equipped with a firearm silencer or firearm muffler shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for 30 years without release.

"(b) In the case of a second conviction under this section, a person shall be sentenced to imprisonment for not less than 20 years without release for possession or not less than 30 years without release for discharge of a firearm, and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release.

"(c) In the case of a third or subsequent conviction under this section, a person shall be sentenced to life imprisonment without release. If the death of a person results from the discharge of a firearm, with intent to kill another person, by a person during the commission of such a crime, the person who discharged the firearm shall be sentenced to life imprisonment without release.

"(d) Notwithstanding any other law, a court shall not place on probation or suspend the sentence of any person convicted of a violation of this section, nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used. No person sentenced under this section shall be eligible for parole, nor shall such person be released for any reason whatsoever, during a term of imprisonment imposed under this section.

"(e) For the purposes of this section, a person shall be considered to be in possession of a firearm if—

"(1) in the case of a crime of violence, the person touches a firearm at the scene of the crime at any time during the commission of the crime; and

"(2) in the case of a drug trafficking crime, the person has a firearm readily available at the scene of the crime during the commission of the crime.

"(f) This section has no application to a person who may be found to have committed a criminal act while acting in defense of person or property during the course of a crime being committed by another person (including the arrest or attempted arrest of the offender during or immediately after the commission of the crime).

"(g) In a case in which an offender may be sentenced under either this section or any other provision of law, the offender shall be sentenced to a term of imprisonment under the provision that authorizes imposition of the longer term of imprisonment.".

(b) MANDATORY MINIMUM PENALTIES FOR DISTRIBUTION OF ILLEGAL DRUGS TO MINORS AND EMPLOYMENT OF MINORS IN DRUG TRAFFICKING.—Section 408 of the District of Columbia Uniform Controlled Substances Act of 1981 (D.C. Code 33-546) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding subsection (a), and except to the extent a greater minimum sentence is otherwise provided by law, a term of imprisonment under section 406 or 407 for a first offense shall be not less than 10 years without release, and for a second offense shall be a mandatory term of life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence and such person shall not be placed on parole or released for any reason whatsoever during the term of such sentence.". This subsection shall not apply in the circumstances described in section 401(b)4 of the Controlled Substances Act (21 U.S.C. 841(b)4).

(c) MANDATORY LIFE IMPRISONMENT FOR THREE-TIME OFFENDERS.—Section 401 of the District of Columbia Uniform Controlled Substances Act of 1981 (D.C. Code 33-541) is amended by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provision of this section, section 408, or any other law, a person who commits a violation of this section involving a controlled substance of a kind and in an amount described in section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841) or commits a violation of section 406 or 407 or commits a crime of violence after two or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with this section. For purposes of this subsection, the term 'crime of violence' means an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

SEC. 140. The Perinatal Abstinence Project located at 3551 Sixteenth Street, Northwest shall not require a certificate of occupancy, pursuant to Public Law 100-430, 100 Stat. 1619.

SEC. 141. None of the funds appropriated by this Act may be used for expansion of the "I-95 Sanitary Landfill" until (1) completion of an environmental impact statement which shall be contracted for by March 31, 1991, and (2) the parties to the December 7, 1987 I-95 Landfill Memorandum of Understanding agree to share the cost of the study proportionate with their projected usage of the Landfill expansion through its estimated life: *Provided further,* That none of the funds appropriated by this Act may be used to transport any output of the municipal waste system of the District of Columbia for disposal in any State until the appropriate State agencies have issued the required permits.

SEC. 142. Section 1-2503 of the District of Columbia Code (1981 edition) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) Nothing in this Act shall be constructed to bar any organization or entity from denying, restricting, abridging, or conditioning the participation in any program or activity that educates, coaches, or trains any juvenile, or holds out any adult as a role model, mentor, or companion to any juvenile, of any adult homosexual, bisexual, or heterosexual person who has been convicted of or is charged with a sexual offense with a juvenile, or who otherwise poses a threat of engaging in sex with a juvenile or otherwise sexually abusing a juvenile; and

"(2) Nothing in this Act shall be constructed to bar any organization or entity from denying, restricting, abridging, or conditioning the participation or any adult homosexual, bisexual, or heterosexual person in any voluntary program or activity that educates, coaches, or trains any juvenile or holds out an adult as a mentor, or companion to a juvenile, if the parent or guardian of said juvenile objects to the participation of such person based on the person's sexual orientation."

SEC. 143. (a) Up to 75 officers or members of the Metropolitan Police Department who were hired before February 14, 1980, and who retire on disability before the end of calendar year 1991 shall be excluded from the computation of the rate of disability retirement under subsection 145(a) of the District of Columbia Retirement Reform Act, as amended, approved September 30, 1983 (97 Stat. 727; D.C. Code, sec. 1-725(a)), for purposes of reducing the authorized Federal payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund pursuant to subsection 145(c) of the District of Columbia Retirement Reform Act.

(b) The Mayor, within 30 days after the enactment of this Act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of section 142(d) and section 144(d) of the District of Columbia Retirement Reform Act of 1979 (Public Law 96-122, D.C. Code, secs. 1-722(d) and 1-724(d)).

(c) If any of the 75 light duty positions that may become vacant under subsection (a) are filled, a civilian employee shall be hired to fill that position or shall be filled by an officer or member of the Metropolitan Police Department for a temporary period of time.

(d) The limited duty policy of the Metropolitan Police Department shall be that in effect prior to July 8, 1990, unless ordered by the relevant court.

SEC. 144. Notwithstanding any other provision of law, the Task Force on Substance Abusing Pregnant Women and Infants Exposed to Maternal Substance Abuse During Pregnancy shall report no later than March 29, 1990.

SEC. 145. Section 103 of the District of Columbia Human Rights Act, effective Dec. 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2503 (1981 edition)) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) Nothing in this chapter shall be construed to bar any organization or entity from denying, restricting, abridging, or conditioning the participation of any adult homosexual person or adult bisexual person in any program or activity that—

"(A) educates, coaches, or trains any juvenile, or

"(B) holds out the adult as a role model, mentor, or companion to any juvenile.

"(2) for purposes of this subsection, the word 'juvenile' means a person who has not attained the age of 18 years.".

This Act may be cited as the "District of Columbia Appropriations Act, 1991".

ADDITIONAL STATEMENTS

HUMAN SERVICES REAUTHORIZATION ACT

● Mr. SIMON. Mr. President, I commend the Senate for its action yesterday in approving the Human Services Reauthorization Act, H.R. 4151. The programs continued and expanded by this bill are central to the Federal Government's commitment to meeting basic human needs, and helping to eliminate poverty and illiteracy through education. I would like to briefly discuss a few of these programs.

HEAD START

I am pleased with the 4-year extension of the Head Start Program. This has clearly been one of our most effective initiatives, and one that we should continue to expand. Under the Senate bill, by the end of the fourth year, if fully funded, Head Start will be reaching 100 percent of all eligible the 3- and 4-year-olds and 30 percent of all eligible 5-year-olds. This will be a remarkable achievement for America's youngest students and for America's education system. There is no question that investment in Head Start is one of the smartest and most cost-effective investments we can make in our children.

I continue to be concerned about the generations of "crack babies" that are just starting to enter a number of programs, including Head Start. I am now hearing from Head Start teachers and administrators in Illinois who feel helpless, without the funds and without the understanding of the unique problems these children may be facing. We need to be sure that those providing services to these children and their families understand well the emotional and learning disabilities these children battle. Teachers tell me that these children are exhibiting problems and behaviors that are different from those they have seen in children exposed to alcohol or other substances during pregnancy.

The Head Start reauthorization allows for a quality improvement fund. These moneys are to be used for salary enhancement, efforts to reduce the student/teacher ratio, structural and technical changes in facilities and/or instruction. But the money can also be used to train Haed Start personnel to identify and address problems of kids from dysfunctional families, children who have experienced chronic violence or children from families with histories of substance abuse. We need to give both Head Start personnel and Head Start families our best effort to address these problems as early as possible and help channel families to other avenues of support.

I applaud the work that has gone into extending and expanding the Head Start Program and feel confident that it will continue to be a highly successful and cost-effective program in the coming years.

FOLLOW THROUGH

Mr. President, when I introduced the bill to reauthorize and expand the follow through Program—S. 2736, incorporated into this measure—I pledged to work with the members of the committee to address a number of concerns about the way the program currently operates. I am pleased that we were able to accomplish that goal and the program was included in the Senate version of H.R. 4151 without opposition.

Follow Through is a unique, model program. It takes disadvantaged children, most of whom were involved in Head Start before they entered elementary school, and works to ensure that they continue to make developmental gains. Its unique design, pairing educational researchers with schools, allows a variety of approaches to be tested and improved. The Department of Education says that the models currently in operation are proven effective.

Despite its effectiveness, however, the Federal Government has not always been kind to Follow Through. Originally conceived as a direct services program, tight budgets forced cuts in appropriations, basically turning it into a demonstration program. Limited funding has also stopped the creation of new models. H.R. 4151 makes a number of changes to address these and other issues:

Dissemination.—Additional funding is authorized, and schools must take over the program from the sponsors after 5 years, freeing up funds for new schools. In addition, the Secretary of Education must ensure that schools can receive, free of charge, information about the Follow Through approaches from the National Diffusion Network.

Parent participation.—The local parent committee must approve the application for funding, and the program must provide for the direct participation of parents.

Comprehensive services.—Grants must be of a sufficient size to provide the comprehensive services contemplated by the Follow Through Act, and the schools must coordinate with the local Head Start providers.

Chapter 1 coordination.—Schools with a high concentration of disadvantaged and former Head Start students would have a priority in receiving Follow Through funding. In those schools, all childen could be served by the Follow Through Program, not just former Head Start participants.

New programs.—At least 10 percent of the funds would be available for the development of new model approaches for continuing the gains of Head Start.

Accountability.—Applicants must describe the expected or, if possible, the actual impact of the Follow Through services on the school program.

Past partisan squabbles over the Follow Through Program severly stunted its growth, but where it still operates, it is a program full of life and hope. I am hopeful that this first bipartisan agreement on Follow Through in more than a decade will bring about some new growth, spreading that life and hope to more schools.

In developing this agreement, I have had considerable assistance from a number of members of the Committee on Labor and Human Resources, and I would like to especially thank my colleague from Kansas, Mrs. KASSEBAUM, for her helpful suggestions and her support.

LOW-INCOME HOUSING ENERGY ASSISTANCE PROGRAM

Mr. President, as the crisis in the Middle East continues through the fall and winter months, the need for the Low-Income Energy Housing Assistance Program [LIHEAP] increases. Unfortunately, we don't hear about the importance of this program until the news covers a story about children who were trapped and killed in their home due to a fire that was started by a space heater. The family was using the space heater as their sole source of heat because they couldn't afford heating costs. Last year's record-breaking cold forced many elderly and poor, in Illinois and around the country, to decide between eating and heating their homes. In our great Nation, how can we let this continue?

LIHEAP helps millions of low-income households around the country to keep from freezing in the winter and boiling in the summer, but currently serves only one-fourth of eligible households. In Illinois, more than 84 percent of families that receive energy assistance have annual incomes of $6,000. As a percentage of income, these families spend four times as much as average families do for heat. In addition, LIHEAP funding has been on the decline since 1985, and the administration's proposed budget would have cut funding and additional 25 percent.

Mr. President, there is some light to this story, and that is the 4-year extension of LIHEAP. I commend my colleague, Senator DODD, for his hard and diligent work on this issue. The reauthorization makes some needed and important changes that will benefit the communities and families receiving energy assistance. The reauthorization provides for increased outreach and intake, phases out the authority to transfer funds from LIHEAP to other programs, and establishes an incentive fund to promote the leveraging of additional energy resources for qualified low-income households. The reauthorization also includes a modest funding increase.●

THE 300TH ANNIVERSARY FOR CHELTENHAM, PA

● Mr. HEINZ. Mr. President, I rise to pay tribute to the town of Cheltenham, PA, which celebrates its 300th anniversary this year.

I would also like to congratulate the Cheltenham 300th Anniversary Celebration committee members, who have volunteered their time and energy to prepare for this special occasion, and without whom, such a grand event could have never succeeded.

From its inception, Cheltenham and its people have epitomized American community values, thought, and dreams. Cheltenham was first settled in 1681 on a 250-acre land grant purchased by Nehemiah Mitchell from William Penn. Only 9 years later, in 1690, Richard Dungworth purchased 6.5 acres along a stream and built a gristmill. Over the years, many mills followed and the town that sprung up appropriately came to be known as Milltown, PA. Not long after this early industrial success, the residents of Milltown requested a post office. However, because Pennsylvania already had a town named Milltown, the request was denied. This minor setback did not halt progress by resourceful residents who, in 1855, changed the name of their town to Cheltenham, a name derived from a city in England from where two of the town's residents hailed.

With a permanent identity established, Cheltenham continued to develop and grow through the balance of the 19th century and up to the present day. The community has seen great change: The advent of electric power at the turn of the century outmoded certain of its industries that were dependent on local creek flow for power, and other industries waxed and waned, as well. But for all of these changes, Cheltenham remained a people dedicated to each others' welfares and the nurturing of the best of American life and values in its children.

Mr. President, Cheltenham still remains a beautiful and exciting town, and the citizens' civic pride is evidenced by their commitment to preserving the town in all its historic splendor. As the community of Cheltenham celebrates its 300th anniversary, I ask my colleagues to join me in extending my best wishes to them for a happy celebration and a very prosperous future.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Mr. Timothy Trenkle, a member of the staff of Senator NANCY KASSEBAUM, to participate in a program in Korea, sponsored by the Ministry of Foreign Affairs [MOFA], from August 18–25, 1990.

The committee has determined that participation by Mr. Trenkle in the program in Korea, at the expense of the Ministry of Foreign Affairs (MOFA], is in the interest of the Senate and the United States.●

SALUTE TO JOHN C. VILLFORTH

● Mr. SARBANES. Mr. President, on September 1, John C. Villforth, an outstanding public servant, retired from the Food and Drug Administration where he served our country with distinction for nearly three decades. In that time, Assistant Surgeon General John C. Villforth has given tirelessly of himself as the leader of FDA's radiological health and medical device organizations.

In the radiological health field, Mr. Villforth is a legendary figure. His career began in 1954 with the U.S. Air Force as a sanitary and industrial engineer and commander of the USAF radiological health laboratory. After 7 years of service in the Armed Forces, Mr. Villforth was commissioned in the U.S. Public Health Service, where his career in public health took root. He worked his way up the ranks in what was the National Center for Radiological Health. In 1969, he was named director of the successor organization—the Bureau of Radiological Health, which had been made part of the FDA and whose mission was reshaped by landmark radiation protection legislation passed by the Congress the year before. As a result of the technological revolution of the 1970's and 1980's, we have all become increasingly aware of the potential radiation hazard from a variety of products, including microwave ovens, color TV's medical and dental x-ray machines, video display terminals, lasers used in entertainment and medical treatment, artificial tanning devices, CT scanners, magnetic resonance imagers, to name just a few. These marvels of technology have profoundly altered the quality and conduct of Americans' daily lives. But like most things in life, these pioneering advances are not totally risk-free. Consequently, we have relied on Government institutions to keep these risks in check and to regulate consumer products in a way that ensures the benefits of their use outweigh public health risks.

Mr. Villforth has carried out this task in outstanding fashion. As the radiological health program matured, Mr. Villforth gained the reputation for being more than just a regulator of products. he was a motivator of people. His efforts to increase public awareness of medical radiation risks and to stimulate the medical community to reevaluate the necessity for routine and high-dose x-ray examination were highly successful.

Mr. Villforth's record of achievement in the radiological health area earned him recognition and respect at the highest levels of the Department of Health and Human Services. In 1976, he was promoted to the rank of Assistant Surgeon General by then-Surgeon General Ehrlich and was appointed as the PHS Chief Engineer from 1985 to 1989 by former Surgeon General Koop. In 1979, former Secretary Califano called on him to serve as the coordinator of the Department's emergency response to the Three Mile Island accident. And in 1982, former Secretary Schweiker looked to Mr. Villforth to head FDA's newly established Center for Devices and Radiological Health.

In taking on these assignments, Mr. Villforth spearheaded the Department's involvement in off-site environmental monitoring and the FDA's testing of food and commodities and raw milk samples to assure they had not been adversely affected by the incident. These surveillance efforts provided the basis for important public health advisories by the Federal Government and officials in Pennsylvania and neighboring States.

In the area of medical devices, Mr. Villforth has demonstrated far sightedness in his management approach. He has effectively blended the talents of his radiation and medical device scientists and regulatory professionals to form a cohesive program with a common mission. He recognized that because of resource limitations, priorities had to be set. He streamlined administrative procedures without compromising the integrity of the premarket review process or sacrificing the quality of new devices entering the marketplace. He strengthened the science base of the new Center and increased the utility of its scientists in the premarket review of new devices and in varoius risk assessment initiatives.

Mr. Villforth also drew upon his successes in the radiation area to launch a wide-ranging educational program to enhance clinical practices in anesthesiology and hemodialysis. He established an alert system to warn health care workers of defective devices and set up a national surveillance system to facilitate the identification and quick correction of malfunctioning equipment. Mr. Villforth extended his educational approach to individuals using these products for homeuse.

Mr. President, it is with sincere gratitude and respect that I recognize this fine gentleman, whose magnificent career has well served the national interest and set a standard of public service that is second to none.●

BANK INSURANCE FUND

● Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of legislation offered by Mr. RIEGLE, chairman of the Senate Banking Committee, to authorize the Federal Deposit Insurance Corporation to increase deposit insurance premiums as necessary to protect the Bank Insurance Fund and the American taxpayer.

Action is required now to ensure that a taxpayer bailout of the banking system will not be the encore to the S&L bailout. The taxpayers of the United States will not tolerate paying for another multibillion-dollar bailout of moribund financial institutions.

In the last 6 months alone, Standard and Poor's has lowered its ratings of 36 U.S. bank holding companies, some more than once, and upgraded only four. This is an unprecedented number of downgrades for S&P. The problems facing the Nation's banks will only worsen in a weakening economy.

Meanwhile, a recently released General Accounting Office audit of the Bank Insurance Fund, reported that the fund is "too thinly capitalized to deal with the potential for bank failures in the event of a recession." The Bank Insurance Fund ended 1989 with a net loss of $852 million, reducing its balance to $13.2 billion. According to GAO, "not since the Great Depression has the Federal system of deposit insurance faced such a period of danger as it does today."

As the banking situation grows more severe, any number of worthwhile solutions will be presented by the administration and Congress. The Banking Committee has recently completed a series of useful hearings examining the condition of the banking industry and the health of the Banking Insurance Fund.

The legislation I cosponsor today is an excellent first step toward bolstering the BIF and safeguarding the industry as a whole. It will allow Federal regulators the flexibility to use their best judgment in responding to conditions in the banking system.

Under current law, premiums or assessments for the Bank Insurance Fund are set at 15 cents per $100 of deposits for 1991, and subsequent years. The FDIC can raise assessments above that level subject to several restrictions. First, the assessment rate cannot rise more than 7.5 cents per year, regardless of the condition of the fund. Second, the assessment rate cannot, under any circumstances, exceed 32.5 cents per $100 of deposits. Third, the assessment rate cannot be increased before January 1, 1995, so long as the fund's ratio of reserves to insured deposits is increasing on a calendar year basis.

This bill removes these restrictions, and it permits the FDIC to set the assessment rate at the level it determines to be appropriate to restore and maintain the BIF's reserves at their target level, now $1.25 in reserves for each $100 in insured deposits, with the FDIC having discretion under current law to raise it to $1.50.

When setting assessment rates, the FDIC would, as under current law, consider the fund's expected operating expenses, case resolution expenditures, and investment income, and the effect of assessment rates on banks' earnings and capital. The minimum assessment would be $1,000 per bank per year, the same as under current law.

Restoring the soundness of the Bank Insurance Fund now is the best course for protecting banks, depositors, and taxpayers.

Yet even as we permit new authority to ask all thrifts to contribute to the general pool of insurance funds in times of genuine difficulty, so we must be determined in seeking restitution from those thrifts and managers who profited unjustly from sham financial practices and abuse of depositors' trust.

If we learn nothing else from the savings and loan crisis, we must learn the principle of institutional responsibility when insolvency looms ahead. If there are risky portfolios, overexposure in risky classes of assets, or frivolous management, individual institutions and their leadership must be held accountable.

Second, the industry as a whole must accept responsibility—through the insurance mechanism—for those institutions that fail. It is not proper, however, to kill an industry by making it accountable for its poorest performers.

The American taxpayer must be last in line when it comes time to rescue insolvent institutions. Only in the most dire of circumstances should taxpayers' resources be used to correct the deficiencies of U.S. financial enterprise.

This legislation upholds the principle of institutional and industry accountability, and I urge that we take this important first step in restoring integrity and stability to the Nation's banks. I encourage my colleagues to support this important measure.●

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the latest budget scorekeeping report for fiscal year 1990, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $3.3 billion in budget authority, and over the budget resolution by $4.2 billion in outlays. Current level is under the revenue floor by $5.2 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $114.8 billion, $14.8 billion above the maximum deficit amount for 1990 of $100 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 17, 1990.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1990 and is current through September 14, 1990. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 1990 Concurrent Resolution on the Budget (H. Con. Res. 106). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated September 10, 1990, there has been no action that affects the current level of spending or revenues.

Sincerely,

ROBERT F. HALE,
(for Robert D. Reischauer, Director).

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 101ST CONG. 2D SESS. AS OF SEPT. 14, 1990

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 106	Current level +/− resolution
Budget authority	1,326.1	1,329.4	−3.3
Outlays	1,169.4	1,165.2	4.2
Revenues	1,060.3	1,065.5	−5.2
Debt subject to limit	3,163.0	[2] 3,122.7	−40.3
Direct loan obligations	19.1	19.3	−.2
Guaranteed loan commitments	115.1	107.3	7.8
Deficit	114.8	[3] 100.0	14.8

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 106. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions. In accordance with sec. 102(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act (101 Stat. 762) the current level deficit amount compared to the maximum deficit amount does not include asset sales.

[2] The public debt limit has been increased temporarily to $3,195,000,000,000 through Oct. 2, 1990 by Public Law 101–350.

[3] Maximum deficit amount [MDA] in accordance with sec. 3(7)(E) of the Congressional Budget Act, as amended.

THE CURRENT LEVEL REPORT, 101ST CONG., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS SEPT. 14, 1990

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			1,068,600
Permanent appropriations and trust funds	954,969	791,109	
Other legislation	635,362	638,737	566

THE CURRENT LEVEL REPORT, 101ST CONG., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS SEPT. 14, 1990—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Offsetting receipts	−233,985	−233,985	
Total enacted in previous sessions	1,356,347	1,195,862	1,069,166
II. Enacted this session:			
Dire emergency supplemental appropriations (P.L. 101–302)	2,293	666	
An act making technical amendments to title 5, U.S. Code (P.L. 101–303)		−1	
Amtrak Reauthorization and Improvement Act (P.L. 101–322)	−10		−10
Oil Pollution Act (P.L. 101–380)			−1
Customs and Trade Act (P.L. 101–382)		7	−4
Total enacted this session	2,283	672	−15
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in budget resolution:			
Salaries of judges	−8	1	
Payment to judicial officers' retirement fund	−4	−4	
Judicial survivors' annuities fund	−3	−3	
Fees and expenses of witnesses	−5		
Justice assistance	−4		
Fisherman's guaranty fund	1	1	
Administration of territories	−1		
Firefighting adjustments	−1,057	−192	
Federal unemployment benefits [FUBA]	5		
Advances to unemployment trust fund	(48)	(48)	
Special benefits	−24		
Black Lung disability trust fund	52	31	
Vaccine improvement program trust fund	7	7	
Federal payments to railroad retirement	1	1	
Retirement pay and medical benefits	−4		
Supplemental security income program	263	263	
Special benefits, disabled coal miners	21		
Grants to States for Medicaid	−907		
Payments to health care trust funds	(325)	(325)	
Family support payments to States	84	84	
Payments to States for AFDC work programs	15	15	
Payments to States for foster care	−83		
Health professions student loan insurance fund	−25	−7	
Guaranteed student loans	−175		
College housing and academic facilities loans	−3	−3	
Rehabilitation services	−79		
Payments to widows and heirs	(1)	(1)	
Reimbursement to the rural electrification fund	111	111	
Dairy indemnity program	(1)	(1)	
Conservation reserve program	720		
Special milk program	−2		
Food stamp program	−2,000		
Child nutrition programs	−74		
Federal crop insurance corporation fund	(1)		
Agriculture credit insurance fund	342		
Rural housing insurance fund	(1)		
Rural communication development fund	(1)		
Payments to the farm credit system financial assistance corporation	−2		
Coast Guard retired pay	−17		
Payment to civil service retirement	(84)	(84)	
Government payments for annuitants	−3	−2	
Readjustment benefits	−62		
Compensation	258	208	
Pensions	−62		
Burial benefits	−4		
Loan guaranty revolving fund	−7		
Disaster relief	−1,100	−883	
Total entitlement authority	−3,834	−371	
VI. Adjustment for economic and technical assumptions	−28,685	−26,763	−8,900

THE CURRENT LEVEL REPORT, 101ST CONG., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS SEPT. 14, 1990—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Total current level as of Sept. 14, 1990	1,326,110	1,169,400	1,060,251
1990 budget resolution H. Con. Res. 106	1,329,400	1,165,200	1,065,500
Amount remaining:			
Over budget resolution		4,200	
Under budget resolution	3,290		5,249

[1] Less than $500,000.

Notes.—Numbers may not add due to rounding. Amounts shown in parenthesis are interfund transactions that do not add to totals.●

TRIBUTE TO DR. PAUL PARKMAN

● Mr. SARBANES. Mr. President, it is with great pride that I note that Dr. Paul Parkman of Kensington, MD, has completed over 30 years of distinguished Government service. During his career, Paul Parkman has played a key role in defeating a dreaded disease that had preyed upon children and has helped facilitate the development of new therapies for some of the worst diseases that are devastating the world today.

Paul Parkman's contributions to the elimination of rubella, or German measles, are legendary. He and a handful of dedicated researchers laboriously tried time and again to isolate the rubella virus. Despite repeated failures, they persevered, and ultimately succeeded. Collaborating with other researchers at the National Institutes of Health, Paul Parkman followed up this momentous discovery with the means for detecting infection with the virus and with a vaccine that could effectively block its spread.

The world changed as a result of these efforts. Rubella epidemics no longer menaced pregnant women and their unborn children. Children who would have been born mentally or physically damaged instead grew up to lead healthy and productive lives.

Very few of us can ever hope to save one life, or to improve the quality of life for a few people. Paul Parkman was responsible for saving and improving countless lives.

Paul Parkman's work has not gone unnoticed by those who have been directly affected by his work. He has received some of the Government's highest civilian honors, including a letter of commendation from President Lyndon Johnson. Moreover, many philanthropic and health professional organizations such as the American Academy of Pediatrics, the United Cerebral Palsy Association, the Food and Drug Law Institute, and the Association for Retarded Citizens have honored Dr. Parkman for his work.

In the years which followed his remarkable achievements against rubella, Dr. Parkman continued to promote scientific progress as a researcher and as a senior administrator. As the Director of the FDA's Center for Biologics Evaluation and Review, Dr. Parkman was at the forefront of many of the most important advances in medicine. During his tenure there, biologic treatments for cancers, AIDS-related diseases, and other life-threatening or serious conditions were approved as quickly as possible.

Paul Parkman's commitment to the health needs of his fellow man has been the enduring theme of his career as a public servant. I am confident that in one way or another, this commitment will continue to manifest itself now that he is leaving the Government. I wish him continued success in all his endeavors and the time and energy to enjoy the happiness he so richly deserves.●

CHARLESTON'S ASHLEY RIVER SCHOOL: USING THE CREATIVE ARTS TO TEACH THE THREE R'S

● Mr. HOLLINGS. Mr. President, South Carolinians take a lot of pride in the role they have played in stimulating public education reform in recent years. What began as a top-down campaign to revitalize public education in our State has taken on a life of its own, inspiring a remarkable range and variety of locally initiated efforts. A superb case in point is Ashley River School in Charleston under the leadership of Principal Rose Maree Myers.

On the outside, Ashley River is no eye-catcher. This public elementary school is housed in cinder-block buildings, with several trailers to accommodate extra classrooms. What's exciting about Ashley River is its flair for combining a commitment to the basics of reading, writing, and arithmetic, with a schoolwide emphasis on the creative arts. In other words, the arts are a medium for the traditional academic message, serving to motivate the students and provide a creative context for the daily lessons. The formula works magnificently thanks to Ashley River's can-do principal and its extremely dedicated corps of teachers.

Mr. President, the Ashley River creative arts program is in its seventh year. Already it has won numerous State and national awards. In short, it works, and educators are coming from around the country to observe Ashley River in action.

Mr. President, I salute Rose Maree Myers and all the teachers at Ashley River Creative Arts Elementary School for the fine job they are doing. To better acquaint our Senate colleagues with this remarkable school, I ask that a recent article from the Sandlapper magazine titled "Who

Says Education Can't Be Fun" be reprinted in the RECORD at this point.

The article follows:

[From the Sandlapper magazine, September-October 1990]

WHO SAYS EDUCATION CAN'T BE FUN?

(By Don McKinney)

Actors do not normally write their own play, let alone compose its music and lyrics and then direct it themselves. But those responsible for "Happy in the Forest," a romantic folk tale complete with duels, dragons and a love story, were no ordinary actors. They were the members of a first grade class.

This was no hand-picked cast, either; this project was the work of a regular class at the Ashley River Creative Arts Elementary School in Charleston, a place where the extraordinary is routine.

First, it is important to make clear that Ashley River is not a school for the performing arts, like the one in New York that inspired the movie and TV series, Fame. Instead of simply teaching music, art, writing or drama, this school uses the creative arts to teach basic skills. "Creativity has been surgically removed from the teaching in most schools," says Rose Maree Myers, the school principal. "We think the creative arts are essential to learning because they make it fun for the children. And who says education can't be fun?"

This might serve as the motto of the unique school, where absences are rare and achievements are high. Now beginning its seventh year, Ashley River has won numerous state and national awards and has drawn educators from as far as Oregon to study the school's methods. At a time when SATs and other test scores are dropping all over the country, when schools are accused of failing to teach children even the basic skills and Time magazine charges that "an appalling number of America's schools are atrocious," Ashley River stands as a model of what can be done with imagination, dedication and a lot of very hard work.

While only a few schools in the country employ Ashley River's approach, Myers hopes "we won't always be unique." If she has her way, they won't be. She lectures frequently to parent and teacher groups around the state, including a number of prestigious private schools, and invites anyone to come watch her and her staff at work. Last spring she spoke to educators in Ohio and Tennessee and was the keynote speaker at one conference at which she held 45 Ph.D. directors of teacher training programs spellbound for almost five hours. Myers is convinced their methods can be adopted anywhere and, if enough people understand what they are doing and how they do it, a revolution can be launched in the way America teaches its children.

The school is not impressive to look at. Located in a relatively poor section of west Charleston, it consists of several cement block buildings and a handful of trailers that, in the days before integration, housed a black middle school and later a high school. (It was even less impressive last spring, after Hurricane Hugo caused a TV tower to fall and smash into one wing. They were scheduled to rebuild this past summer, if the money could be found.) The buildings had been condemned and were to be torn down when county Superintendent of Schools Dr. Ron McWert had an idea. He had heard of an inner city school in Milwaukee, WI, the Elm Street Elementary School, that had achieved wonders with a new approach to teaching. Charleston needed another elementary school, and instead of spending some $6 million on a new facility, McWert wondered if the old high school couldn't be adapted for that purpose.

The first thing he needed was a principal, and he found her in Myers, a former art teacher and assistant school principal who believes strongly in the importance of the creative arts in education. A slim, attractive South Carolinian of 54, she looks like the actress she started out to be before she quit to get married. "I was a fair actress," she says, "but I didn't care for living out of a suitcase." She and her husband soon had two children, and she began teaching elementary school. She left to teach art in Charleston and get her masters degree from the College of Charleston. "I began to see how you could teach math and social science through art, how the whole ball of wax comes together." She was ready to put her ideas into action.

Being a public school, Ashley River from the beginning was open on a first-come, first-served basis to any child in the district who applied; there has never been any screening to determine intelligence or creativity.

"I believe all children are creative," she says. The only selectivity was in the teachers; Myers demanded—and got—the right to hand-pick her staff.

The school has maintained a 60/40 white/black ratio, in keeping with the population breakdown of the school district, and never has lacked for pupils. Parents were skeptical at first, particularly white parents concerned about the neighborhood. But there were enough applicants to fill the quota, which is now 477 students. Keeping it full has been no problem; there is a waiting list of approximately 1,300 children, including several unborn babies.

Because Ashley River offers more than most schools in the form of materials, trips, guest speakers and other special projects, it's necessary to pay for this through private fundraising. The parents are very supportive, and there are also monies from the state and the South Carolina Arts Commission. But among their most innovative sources of support are partnerships with local businesses. Business representatives are part of the school improvement team, along with parents and teachers, and they meet regularly to plan the school's future needs; Bojangles, Coca-Cola and Piggly Wiggly have been partners for the past several years.

They also have cultural partnerships with the Charleston Symphony, The Charleston Ballet and the local Gibbes Art Gallery, and they work closely with the College of Charleston, The Citadel and Baptist College.

By every measure, the school has been an unqualified success. The student test scores are not only considerably higher than both city and state averages, but have risen steadily each year. The only problem is that students graduating from Ashley River find themselves so far ahead of students coming in from other area schools that special programs have to be prepared for them. There is considerable support from parents and administrators for a middle and high school that uses the techniques developed at Ashley River, but so far this has not happened. While they have won recognition around the country, Charleston schools have been slow to come around. "Let's face it; we are a thorn in the sides of most other schools," Myers admits.

What is it that makes Ashley River so unique? To begin with, all subjects are taught on an inter-disciplinary basis, meaning a child does not simply study math, for instance, but learns it in conjunction with all the other basic skills. In Angela Block's first grade class, when children study the human body, they practice math by learning to count and classify the bones, eventually forming a skeleton. To hone their writing skills, they write a story predicting what their bodies might be like without bones, and are encouraged to make up words that describe this boneless state. For science, they construct and label a model of the heart, and for social studies they select and draw a picture of someone in the community such as a doctor, who helps keep their bodies healthy. They learn about balanced diets and health by cutting out pictures of the four food groups. And to relate it all to the world of music, they use the spiritual "Dem Bones" to show the importance of a steady beat. Thus, in examining the parts and structure of their bodies, they practice all the learning skills and see how they relate.

"Children used to ask, 'Why do I have to learn this?'" Myers says. "By relating each part of the educational process to the whole, the teaching itself gives them the answer."

To teach fractions, a particularly difficult concept for young minds to grasp, a third grade teacher begins by having each child simply draw a line around a pie plate to form a circle. The circle is cut out and folded in half. "Well, what is this?" the teacher asks. Seeing that each part is half of the whole, the child folds the circle again and again until he or she has formed quarters and eighths.

One the children have grasped the concept of what a fraction of something is, they are asked to draw designs on the different sections of the circle and color them in, creating a kind of kaleidoscope. The gaily colored circles then are hung around the room. The child not only sees that he or she has created something new and beautiful, but in doing so has been introduced to a new concept—without ever quite realizing that a teaching process has been going on.

In a music class, Anne Cheek introduces the subject of English country dancing as it was practiced in colonial America. In addition to showing her students how the dances are done, she brings in history by telling how these dances fit into the social life of early days. Students are given books about the period, thus polishing their reading skills, and write stories imagining the lives of the people. And they get lessons on the autoharp and the recorder to see how the music was made.

In the Learning Center, a special room set aside for all children to visit each day, the subject for last spring was communications. Children learn how everyone from the most primitive societies to the most sophisticated sends messages to one another. A group of third graders were making a TV commercial, which would be shown on a local station. Other children did a talk show, and one group put on a newscast complete with a serious anchor and a jolly weatherman. On the wall, a huge, circular Aztec sun calendar showed how one early society dealt with the same problems.

In a Spanish class, second graders were dancing and singing to a Spanish tune. "Otra pied," the teacher pointed out, and a small child began a dance step with the other foot. "Muy bien," she said with a

smile. No one seemed to notice that visitors had entered the room.

In an acting class, the children were playing a kind of charades designed to show how to express themselves with their bodies. A group of three or four were given an idea to act out—rocking chair, vacuum cleaner, toll booth—and the others cried out their guesses. Given the word "bacon," one group went into paroxysms of rolling and leaping about on the floor. "Popcorn!" "River!" "Snakes!" "An earthquake!" The teacher carefully praised all, their guesses, saving her special praise for the student who got it right.

In an art class, a young girl lay on a table while two students covered her body with a sheet. An attendant put a drinking straw in her mouth and began covering her face with layers of wet, plaster-soaked gauze pads. "Can you breathe through the straw?" an attendant asked. The straw wiggled back and forth, indicating she could. More and more plaster was applied until the small face was covered completely.

The students were learning history through art. They were studying the Middle Ages, and this exercise was showing them how to make the death masks found on caskets in Gothic cathedrals. "I like it when it turns out, because it looks so cool," one student said.

On a recent visit, children were studying Africa. They all made African tribal masks and learned to make elaborate pottery. They had studied the music, plus its geography and cultural history.

In addition to using creative techniques to learn the Three Rs, the students have time set aside each day to learn music, dance, drama and art. They are clearly enthusiastic about what they are doing; on one classroom door was the legend "Our Future Is So Bright We've Got To Wear. . . ." Below it was a smiling face complete with sunglasses. They write their own plays, often adapting short stories or children's books. Even first graders learn the violin, using the Suzuki method, and others are trained in gymnastics and ballet. They buy and prepare food in a test kitchen, use computers in the Computer Lab and do scientific experiments in the Science Lab.

A Resource Center offers help for children who are not working up to their potential, and even here, the emphasis is on having fun while you learn. Several girls and boys were getting remedial work in math by means of a numbered chart on the floor, on which they leaped about, playing a kind of hopscotch.

No stigma is attached to the Resource Center, and students look forward to going there.

One of the most unusual innovations at Ashley River is a costume closet, to which any child can go on Wednesday or Friday mornings and select an outfit to be worn all day. "They can be whoever they want to be," Myers says, "and they need not tell anyone who they are." One day she saw two little girls in long, flowing gowns sashaying down the hall. One was wearing a white wig and the other giggled, "She's my grandmother." Neither seemed to notice one was white, the other black.

Little attention is paid to visitors, either by students or teachers. In fact, given her desire to expose the school to as many visitors as possible, Myers tells applicants that if they are going to be disturbed by anyone coming in the classroom, they had better go to another school.

As for the students, they are so involved in what they are doing it's hard for an outsider to distract them.

In a second grade classroom, Patty Thompson tells her visitors how their musical play had been created the year before. In the classroom behind her some students are writing, some are trying on different costumes, one little girl is dancing to unheard music; it is the end of the day, but they are all perfectly under control, each doing his or her own thing.

"We were studying fairy and folk tales," Thompson explains, "and I decided to teach the dramatic form by having them turn a west African folk tale into a play." They then decided to create their own fairy tale, calling out suggestions which Thompson wrote down. "If they'd get stuck, I'd tell them to think about it overnight and we'd continue the next day." They finished in a week, then set out to write the songs. After the poems were complete, they began composing tunes, singing them into a tape recorder. One parent scored the music, and a member of the Charleston Ballet helped the young performers choreograph their dances. When they finished, it was put on for parents and staff and then, on request, performed at the famous Piccolo Spoleto festival.

Their creative training does not stop with writing and performing. Third grade students also learn sign language and sign songs for the deaf. In addition to performing, they make videotapes which are sent to schools for children with hearing problems.

Creative writing is recognized, as well. All written assignments are bound into books, designed by the students and published for them to take home. They produce a yearbook, The Unicorn, filled with art, stories and poems. ("Spring is a time to sprout . . . and be born . . . and to see a unicorn," wrote one first grader.)

The unicorn was chosen as the school mascot in an election, and images of unicorns appear throughout the school; there are six in Myers' office alone. The plot of "Happy in the Forest" involved a wounded unicorn; the school singing group is the Unichorus and the newsletter is the Unichronicle. When Myers was selected by the Kennedy Center in Washington to be one of two school administrators from the entire country to go on a cultural exchange trip to China last fall, the students decided she had to have a special name. "She is our chief," one said. "A grand chief!" another chimed in. "We'll call her our Grand Chief Unicorn!"

They made a trip to a local Chinese restaurant to get someone to translate the name into Chinese, and discovered the Chinese have no name for "unicorn." The best they could come up with was "dragon horse." So on her office door is a sign in Chinese with Tie Tawel Lone Ma written underneath—"Grand Chief Dragon Horse." Before she left, the students built a Chinese dragon in her honor and wore it to the airport when she returned.

Also in her office is a color photograph that shows her smiling broadly with a huge red bow tied around her head. My wife asked her about it, and she laughed and said, "You have passed one of my tests. If an applicant can sit through an interview without asking about that picture, I become suspicious that they may be too timid, too uncertain of themselves, to teach in this environment. I want teachers who are comfortable with themselves and have enough self-confidence to ask me why in the world I would act in such a foolish way."

The PTA had given the school a microwave oven, she explains, and it came in a box tied with the ribbon. When the box was opened, "my silly side came out, and I just tied the ribbon around my head." She didn't know someone had snapped a picture until her teachers presented it to her the following Christmas. "Remember, we're professionals" is something she constantly tells her staff. And under the beribboned face are inscribed the words, "Remember, we're professionals."

While her hand-picked teachers are an important reason for the school's success, the relationship they have with parents is equally important. "It's tough to be a parent today," Myers says, "and our job is to help all we can."

She holds regular meetings with them to explain what the school is doing and how they can play a part. "Parents have to be partners. When a parent is there to support what the teacher is doing, it maximizes the learning for their child."

Some of these learning problems are not easy. In addition to the regular students, Ashley River has several dozen children who fall into a category known as "trainable mentally handicapped." These children are severely retarded and would face a life of total dependency, probably in an institution, without help. I watched one teacher using a computer to teach them words and numbers, and their excitement as they grasped these new ideas was obvious.

They are taught as much reading and simple arithmetic as they can absorb and are given practical training in caring for themselves, in shopping at a grocery store and in doing simple jobs. Believing "every living being deserves an opportunity," Myers hopes to teach them enough that they can function on their own.

She described one child who came from a single-parent home where the mother worked two jobs. The child could not speak when he entered kindergarten. He would not raise his head or respond to questions. A few months into his first grade year, the school began planning its annual Christmas play. One of the characters was a cardboard snowman, and the boy was asked to get inside and move about as the snowman "came to life." He not only did his part, but in the process began to come out of his shell and relate to other children. His progress has been remarkable; he's in middle school and has never repeated a grade.

One girl arrived in a wheelchair; she could not use her hands or feet, could not talk, never smiled. She still cannot speak but has learned to walk, and her smiling face shows how happy she is in this loving environment.

Does she ever think there is a child she can't help? "You can never give up on a child," she answers softly.

The school itself is proof of this. There are few problems in attendance (it runs at 97 percent), and unlike most other schools, almost none with discipline. Myers says there are no discipline problems at all with children who begin at Ashley River, but they sometimes have difficulties with children who have transferred from private schools. "These are kids who have bombed out everywhere they've been and it takes awhile to get them straightened out."

The system is simple. When a child misbehaves, the parent is telephoned or a note is sent home. "Parents have a leverage at home we don't have," Myers says, "such as TV or play privileges." Similarly, if a child is absent, the parents are called and told, "We missed your child today." This usually

uncovers the reason and leads to a prompt return.

Problem children are sent to her office, where she tries to find the reason for their behavior. There is a drawing on her wall, done by a child who had been difficult. She hopes seeing his picture on display will show him she values him and wants to be his friend. "It's hard to be tough and still let them know that you care," she says.

The evidence of her caring is shown not by the long waiting list of children whose parents want them admitted to Ashley River and by the repeated hugs she gets from children as she walks down the corridors, but by the awards the school and its teachers have won. These are not only city and state awards; Myers was chosen in 1988 by the Kennedy Center as one of nine outstanding elementary school administrators in the nation.

One of her most loyal supporters is Board of Education member Coleman Glaze, who is deeply concerned about the decline of education in the country and feels her approach is an important part of the solution. "We have lost more ground in the past 50 years than we care to admit," he says. "Businesses in the state have been complaining that they can't find enough qualified people to fill the available jobs. During the 1960s and '70s we didn't demand much of our children, and we didn't get much." He decided it was time to reverse this trend, which is why he backed Ashley River from the start.

"Education is a business," he says, echoing something Myers had told us earlier, "the most important business we have. We used to hire principals and teachers if they could maintain order—the old football coach mentality. Now we know they have to be instructional leaders, and she is one of the best.

"We may have had words, but Rose Maree has never lost sight of the mission."

What can parents do who aren't lucky enough to have a Rose Maree Myers as their child's principal?

"The first thing parents have to understand," she says, "is that they are the strongest force a school system has to bring about change and make quality education possible. Parents have to become involved, to learn what their role in the education of their children has to be. But before they can bring about change, they have to find out what their expectations ought to be. Then they can form support groups, bang on administration doors, keep agitating until they get what they want. They have to recognize that their children deserve a quality education, and that they are the only ones who can make it happen.

"We're teaching children not only to read and write, but to think. The methods we've been using in our schools have been outmoded for a long time. Now we have to start preparing our children for the world we live in today."

(Don McKinney is a former magazine editor who teaches magazine writing and editing at the University of South Carolina.)●

SIX AWARD-WINNING CONNECTICUT SCHOOLS

● Mr. DODD. Mr. President, I would like to salute the important work and continuing contribution of a group of fine schools across the country dedicated to excellence in education. In particular, I rise today to commend six Connecticut winners of this year's U.S. Department of Education's Elementary Recognition Program: The Bess and Paul Sigel Hebrew Academy of Greater Hartford, the Columbus-Magnet School in Norwalk, the Naubuc School in Glastonbury, the St. Brendan School in New Haven, the Tashua School in Trumbull, and the West Hill School in Rocky Hill.

It is no surprise that these six schools were recognized Monday at a White House ceremony for excellence in education; they have long exemplified what is best about education in America.

These schools were recognized for their excellence in academic achievement through responsible behavior on the part of the students, visionary leadership, a high degree of parental involvement, exhibiting a sense of shared purpose among faculty, students, parents, and the community and by providing an environment that challenges all students to learn.

These days we often hear about failing test scores and the decline of education in the United States. It's refreshing—indeed uplifting—to see examples of what can be accomplished when parents, teachers, and students join together to make the most of educational opportunities.

Mr. President, I firmly believe that the one of the greatest gifts we can give our children is the gift of knowledge. It's clear that these six schools consistently give that gift every day, and I applaud their commitment and dedication to excellence in education.●

ELLIS ISLAND REDEDICATION

● Mr. BOSCHWITZ. Mr. President, the recent rededication of Ellis Island is a vivid reminder of the rich immigrant heritage of our great Nation.

As the only immigrant serving in the U.S. Senate, I am proud of this tradition. I strongly believe that immigrants enrich our country—both culturally and intellectually.

If there is one thing that distinguishes us from other nations, it is the fact that virtually all U.S. citizens are immigrants themselves or descendants of immigrants—sons and daughters of immigrants or grandsons and granddaughters of immigrants.

Indeed, more than 100 million Americans—about 40 percent of our Nation's population—can trace their roots through someone who entered Ellis Island in the years 1892 through 1954.

Vice President QUAYLE spoke at the rededication ceremony. His remarks about the journey of millions of immigrants which took them through Ellis Island were moving.

He said:

Look out there now, to that beautiful harbor, and you can picture them—those travelers of an earlier time who spent weeks of loneliness and privation in dark, dank steerage. Picture the steamers drawing near—and suddenly hundreds of people pouring onto the decks. You can almost see how those tired eyes strained for their first glimpse of the world's symbol of freedom.

Picture them searching for the Statue of Liberty through early morning fog—or through the dazzling reflection of sunlight on this water—or through the fading glow of dusk. Lady Liberty was their personal symbol of deliverance from darkness to light, their personal welcome to the promised land where all things were possible, and all sacrifices would be redeemed.

This red-brick world of Ellis Island was their gateway—a place of almost mythic transformation. For through that door to the right surged Russians, Germans, Italians, Slavs, Greeks. But through the door to the left emerged * * * Americans.

The rededication of Ellis Island was well-covered by the media. I have seen numerous stories and pictures of the dedication ceremony and about the history of this great entry point for millions.

While I did not pass through Ellis Island on my entrance to the United States. I have heard the stories of many who did take that route. Most passed through the island in a matter of hours. While it was a bit of a complex process, they still felt comfort by finally setting foot in this land of opportunity.

Covering some 27 acres in New York within view of the Statue of Liberty, 12 million immigrants passed through this facility in a span of 32 years; 1907 was the peak year for immigration, and that is when the record was set at Ellis Island for processing over 11,000 immigrants in a single day.

The newly constructed museum on Ellis Island will serve as an important reminder of the lengthy journeys of millions seeking to settle in a new land—a land of refuge and endless opportunity. It will indeed honor all immigrants and all Americans.

Let me turn briefly to immigration legislation pending before Congress. A thoughtful article written by economist Julian Simon recently appeared in the Washington Post. He calls for more liberal immigration policies and cites the many contributions of immigrants to our Nation. I encourage my colleagues to read this article and ask that it be printed in the RECORD.

The article follows:

[From the Washington Post, Sept. 1, 1990]

IMMIGRATION FOR A STRONGER AMERICA

(By Julian L. Simon)

High on Congress's agenda in September is immigration. The Morrison bill in the House could do more to advance all the goals of the United States during the next decade or two than any other pending legislation. Yet the Bush administration and organized labor—an unlikely couple—seek to gut the bill because of economic ignorance and nativism.

Worldwide, barriers to freedom have been collapsing. Messages and ideas now penetrate everywhere electronically, cheaply. And financial capital speeds from country

to country and, like Mercury, eludes governmental control.

Mobility of goods and people has increased from a walker's pace to jet speed. And political barriers to trade have diminished, despite newspaper stories about trade hassles. All these changes mean more liberty.

Yet there remain barriers to the movement of the most important of "goods"—human beings. Against the economic and cultural welfare of individual nations, and against the interests of all civilization, countries still prevent people from going where they want to go. True, people are no longer penned up in the country in which they are born, except for in the Soviet Union, China, Albania, Vietnam and a few other countries. But without the freedom to enter where they want to go, freedom to leave is of diminished value. We still tell almost all people of talent and energy who wish to join our society, "You may not enter unless you have relatives in the United States."

What foolishness. An unassailable body of recent economic research proves that we are made richer by allowing people to enter freely. We also know from a body of indubitable historical and sociological research that migrants carry valuable ideas with them and create new ideas as a result of having lived in two cultures.

What cheats us of these benefits? Age-old "common sense," economic misunderstanding cum racism (or "nativism," in polite lingo). But sometimes there is an opportunity to drive back the forces of darkness. Now, Rep. Bruce Morrison's (D-Conn.) immigration bill, just voted out of the House Judiciary Committee, promises a bright morning for human liberty.

The main thrust of the Morrison bill is an increase in the number of persons who will be allowed to enter the United States. Keep your eyes focused upon the crucial overall number, and the attempt of the anti-immigration lobby and Sen. Alan Simpson (R-Wyo.) to put a "cap" on immigration. The total matters more than how the overall number will be divided among family reconstitution, skill-based immigration, a point system, this country or that one, etc.

Here are the key demographic and economic facts:

Immigrants do not cause native unemployment, even among low-paid and minority groups. Recent studies all agree that the bogey of "displacement" of natives does not exist. New entrants not only take jobs, they make jobs with their purchasing power and with the new businesses they start.

Immigrants do not rip off natives by overusing welfare services. Immigrants typically arrive when they are young and healthy. Hence new immigrant families use less welfare services than do native families, because immigrants do not receive expensive Social Security and other aid to the aged. And immigrant families pay more taxes than do native families. Therefore, an average immigrant family puts about $2,500 into the public coffers every year—enabling a native breadwinner to retire two years earlier than otherwise.

Immigrants bring high-tech skills that the economy needs badly. Immigrants are not "huddled masses." The proportion of new arrivals with post-graduate education is far higher than the average of the native labor force.

Immigration is low rather than high relative to historical rates of immigration in the peak years at the turn of the century. Immigration as a proportion of population is less than a fourth of what it was earlier. Even in absolute numbers, total immigration is nowhere near its volume a century ago.

The foreign-born population is only about 6 percent now—less than the proportion in such countries as Great Britain, France and Germany, vastly lower than in Australia and Canada and less than half of what it used to be here.

Natural resources and the environment are not at risk from immigration. The long-term trends reveal that our air and water are getting cleaner rather than dirtier, and our supplies of natural resources are becoming more available rather than exhausted, contrary to common belief. Immigration increases the technical knowledge that speeds these benign trends.

Immigration reduces the social costs of the elderly, which can't be cut. More and more of the U.S. population is retired, with a smaller proportion of adults in the labor force. New immigrants typically are just entering the prime of their work lives and taxpaying years. Immigration is the only feasible way to lighten the Social Security burden of the aging U.S. population. It also reduces the federal deficit, which would not exist if people still lived the short lives and had the large numbers of children that they did early in this century.●

PUEBLO ADOPTS U.S.S. "REID"

● Mr. ARMSTRONG. Mr. President, Pueblo Elks Lodge No. 90 has taken a bold step in support of our Armed Forces serving in the Persian Gulf—they're the first Elks Lodge in the Nation to adopt a military unit officially. Lodge No. 90 has adopted the U.S.S. *Reid*, a guided missile frigate serving in the gulf. This action demonstrates again Pueblo's commitment to our men and women serving to defend America's interests around the world.

Chapter No. 90 of the Benevolent and Protective Order of Elks in Pueblo was founded in 1888, and has always been a strong supporter of our service men and women. They recognize that democracy thrives not on privileges accepted complacently, but on obligations met courageously; that sacrifice, eternal vigilance, and preparedness are the price of liberty. It is within this framework Pueblo Lodge No. 90 recognizes the need to support those who are placing their lives in jeopardy defending our country's interests in the Persian Gulf. Therefore, they have chosen to adopt the U.S.S. *Reid* to demonstrate that support.

The U.S.S. *Reid* is the guided missile frigate that fired the first shots in the current naval blockade in an attempt to stop a blockade-running Iraqi ship. The frigate bears the name borne by three former destroyers who were named after sailing master Samuel Chester Reid. Samuel Reid served in the U.S. Navy from 1783 to 1861, was a hero of the War of 1812 and a designer of the U.S.-flag in its present form. The first destroyer named *Reid* attacked enemy submarines while on escort and patrol during World War I. The third U.S. naval ship named for Samuel Reid was one of the outstanding destroyers in Pacific combat operations in World War II until her loss in December 1944, while fighting off massive suicide plane attacks during the liberation of the Philippines. Thus the current frigate carries, along with her name, a long tradition of valiant efforts in the service and defense of our country.

The Pueblo Elks Lodge hopes, as the first Benevolent and Protective Chapter of the Order of the Elks to adopt a military unit, that it will set an example of support for our service men and women for other lodges and other organizations throughout the country. The patriotic citizens of Pueblo deserve our notice and commendation.●

THE CENTENNIAL CELEBRATION OF INDIAN HEAD NAVAL ORDNANCE STATION

● Mr. SARBANES. Mr. President, on September 25 the Naval Ordnance Station at Indian Head, MD, will mark its centennial of service to our Nation.

On the occasion of the station's 100th birthday, I rise to pay tribute to this facility and to the men and women whose dedication and service have given it the excellent national reputation that it so richly deserves. Last year I had the opportunity to spend a day at Indian Head visiting with its able commanding officer, Capt. Edwin P. Nicholson. Before I left, I told him how fortunate he is that his own commitment to public service is matched by that of his 2,900 employees. In my view, Mr. President, those dedicated military personnel and civilian employees are national assets.

Mr. President, the station has been an important part of Charles County and the State of Maryland since its founding in 1890. During its first 10 years of operation, the facility concentrated on testing gun powder. The station, then known as the Naval Proving Ground, was the first military facility to produce smokeless powder.

The facility grew during World War I and was redesignated as the Naval Powder Factory in 1932. During World War II, the factory concentrated on the development of flashless powder and research on rockets and antitank weapons. By the end of that war, there had been substantial new construction on the property and propellant research had been added to the station's mission. by 1943, Route 210 had been completed, connecting Indian Head with the Nation's Capital.

Four new production plants were added during the Korean war and in 1958 the facility was renamed the Naval Propellant Plant. Two years later, a total of 23 buildings were added for the manufacture of Polaris missile propellant.

In 1966, the facility was redesignated the Naval Ordnance Station and,

throughout the war in Vietnam, its production lines operated close to full capacity. Since then, the station has concentrated on highly technical engineering support.

Today, the Indian Head facility proudly provides ordnance and weapons support to the Navy and the Armed Forces of the United States and our allies. It includes a number of engineering centers of excellence and plays a critical role in solid propulsion ordnance technology. The station also continues its long tradition as a manufacturer of ordnance.

It is with great pride that I will participate in the Naval Ordnance Station's celebration of a century of excellence and I urge my colleagues to join me in saluting the station's men and women for their service to our great Nation.●

BETTER HEALTH PROTECTION FOR MOTHERS AND CHILDREN ACT OF 1990

● Mr. BRADLEY, Mr. President, I rise to cosponsor the Medicaid Better Health Protection for Mothers and Children Act of 1990. This legislation would significantly expand coverage and benefits for a significant portion of our most at-risk population in America, poor children. The legislation would expand coverage to all children below the age of 19 up to the Federal poverty level. In addition, the bill will set national standards for Medicaid payments to providers of obstetric and pediatric services. These changes, properly implemented, can assure access to care and a high quality of care for all poor pregnant women and children.

Our record on how we treat children in America today is less than exemplary. It is unacceptable that in America today, infant mortality is higher than in all other industrialized nations. It is unacceptable that the country that pioneered the development of vaccines should have childhood immunization rates among minority Americans that rank behind 48 other countries including Albania and Botswana. A country that can put men on the Moon and can dream of sending men to Mars can surely find ways to add ounces to the birthweight of an infant or to get children to the doctor for preventive health care.

This bill will greatly expand health care coverage to the 12 million children who are currently uninsured. Our greatness as a nation is diminished by our reluctance to provide basic health care to our children. This bill helps us to begin to redress this glaring omission. It provides full Federal funding for these expansions in the next 3 years with a gradual phasing in of State matching dollars over the ensuing 3 years. This will ensure their timely implementation. The program expansion will be funded through a cigarette excise tax increase.

I urge my colleagues to support this important legislation.●

UNANIMOUS-CONSENT AGREEMENT

ORDERS

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate recesses today it stand in recess until 10 a.m., tomorrow, Thursday, September 20; that following the prayer, the Journal of proceedings be deemed approved to date; that following the time for the two leaders under the standing order there be a period of time for the transaction of routine morning business, not to extend beyond 11 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each; that when the Senate recesses at the close of business tomorrow, Thursday, September 20, it stand in adjournment or recess until Monday, September 24, at 9:30 a.m.; that following the prayer the Journal of proceedings be deemed approved to date; that following the time reserved for the two leaders there be a period for the transaction of routine morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each; that at 10 a.m. on Monday the Senate resume consideration of S. 1224, the CAFE standards bill, for debate on amendments to the bill and to the committee substitute; that any votes ordered with respect to this measure on which agreement can be reached occur upon the disposition of S. 1511; that when the Senate recesses at the close of business on Monday, September 24, it stand in recess or adjournment until Tuesday, September 25, at 8:45 a.m; that following the prayer the Journal of proceedings be deemed approved to date, that the time for the two leaders be reserved for their use later in the day, and that there then be a period for the transaction of routine morning business not to extend beyond 9 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each; that at 9 a.m. the Senate proceed to the consideration of Calendar No. 182, S. 110, the title X bill, and that at 11:30 a.m. the Senate resume consideration of S. 1224, the CAFE standards bill, for debate only for 1 hour with the time to be equally divided and controlled between Senators BRYAN and RIEGLE or their designees; that at the conclusion or yielding back of that time, the Senate stand in recess until 2:15 p.m. for the two party conferences; and that at 2:15 p.m., the Senate proceed to vote to invoke cloture on the committee substitute as amended, if amended, to S. 1224; and that immediately following the completion of that vote, regardless of the outcome, the Senate proceed to the Executive Calendar under the consent agreement that has previously been entered; that following the disposition of the Executive Calendar treaties and upon the resumption of legislative session, the Senate resume consideration of S. 110, the title X bill, regardless of the outcome of the earlier cloture vote on S. 1224, the CAFE standards bill; that on Wednesday morning, September 26, immediately following the conclusion of morning business, there be a vote on a motion to invoke cloture on the committee substitute, as modified, to S. 110, the title X bill, to be followed immediately, regardless of the outcome of that cloture vote, by a cloture vote on the motion to proceed to the consideration of Calendar No. 260, S. 874, the motor-voter bill; and that the filing of the petition and the live quorum as required under rule XXII be waived with respect to each of the three cloture votes that I have listed; and that the Senate consider and dispose of the above measures in the order in which cloture was invoked in relation thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, I want to clarify for the record that if we invoke cloture on any of the committee substitutes, the Senate will remain on that measure until final disposition of that measure, prior to the next measure on which cloture has been invoked being brought before the Senate.

Mr. President, let me now attempt to recapitulate in chronological order the various measures that the Senate will be considering on next Monday through Wednesday, because what we have been able to do through these various agreements is to organize the schedule in a compact manner, which would ordinarily have required several days of Senate action, and which will permit us to proceed and not to require any votes during the 2 days of religious holiday upcoming on tomorrow and Friday.

At 10 a.m. on Monday morning, the Senate will return to consideration of the CAFE standards bill. That will be debated during the day. At 5 p.m. on Monday, the Senate will return to consideration of the older workers bill under the agreement previously obtained with respect to that measure. At 7 p.m. on Monday, votes will occur with respect to the older workers bill as set forth under the previous agreement.

If during consideration of the CAFE standards bill during the day on Monday, there has been agreement to order a vote on any amendments to that bill, votes on those amendments

will occur after the votes on the amendments to the Older Workers Act, as previously described.

So votes on Monday will occur, beginning at 7 p.m., first with respect to the older workers bill, as described in that agreement, and immediately following that with respect to the CAFE standards bill, if there have been any votes ordered with respect to that bill.

On Tuesday morning at 9 o'clock, the Senate will take up the title X bill. There will be a period for amendment and debate to that bill until 11:30 Tuesday morning when, for 1 hour, there will be debate only on the CAFE standards bill prior to the cloture vote on that bill. That cloture vote will occur at 2:15 p.m. immediately following the party conferences.

Immediately thereafter, at 2:30 on Tuesday, the Senate will take up the two executive treaties now pending on the calendar, with 2 hours of debate and then votes on those two treaties, which should occur at about 4:30 p.m. on Tuesday.

Immediately following those votes and, therefore, at about 5 p.m. on Tuesday, the Senate will return to consideration of the title X bill, and will continue on that bill for the remainder of that legislative day.

On Wednesday, the first matter will be a cloture vote on the title X bill, and that will be immediately followed by a cloture vote on the motion to proceed to the motor-voter bill.

As I indicated in my earlier remarks, if cloture is invoked on any of the three measures with respect to which cloture votes will occur on Tuesday or Wednesday, those measures will be taken up in the order in which cloture has been invoked, and if a committee substitute is involved, the Senate will remain on that particular measure until final disposition of the measure occurs before the next measure is brought before the Senate.

This means, Mr. President, that there will be a substantial number of votes, and the disposition of a substantial number of measures early next week, all of which has been made possible by the cooperation of the many Senators involved in these various bills. And although there have been lengthly periods of delay today, I believe ultimately they have proven to be productive as we now are able to assure Senators that there will be no recorded votes on tomorrow or Friday, and the next recorded votes will occur not earlier than 7 p.m. on Monday.

Mr. President, again, I thank all of my colleagues for their cooperation in these matters, and I think fairness dictates thanks to the staff on both sides, who are responsible for putting this complicated but I think very productive agreement in order.

CORRECTION IN THE ENGROSSMENT OF H.R. 5241

Mr. MITCHELL. Mr. President, I ask unanimous consent that in the engrossment of H.R. 5241, the Treasury appropriations bill, amendment No. 2614, that the following be inserted which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess, as under the previous order, until 10 a.m. tomorrow.

There being no objection, at 6:28 p.m., the Senate recessed until Thursday, September 20, 1990, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 19, 1990:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MARY SHANNON BRUNETTE, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE SHERRIE SANDY ROLLINS.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. ROBERT J. KELLY, U.S. NAVY, [redacted]

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

ADM. CHARLES R. LARSON, U.S. NAVY, [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. WILLIAM D. SMITH, U.S. NAVY, [redacted]

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES AS ASSISTANT SURGEON GENERAL OF THE ARMY/CHIEF DENTAL CORPS AND APPOINTED TO THE GRADE OF MAJOR GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 3036 AND 3039:

To be permanent major general

To be assistant surgeon general/chief, Dental Corps.

BRIG. GEN. THOMAS R. TEMPEL, [redacted] U.S. ARMY.

THE FOLLOWING-NAMED ARMY MEDICAL CORPS OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624(C):

To be permanent major general

BRIG. GEN. MICHAEL J. SCOTTI, [redacted] U.S. ARMY

To be permanent brigadier general

COL. RONALD R. BLANCK, [redacted] U.S. ARMY.